(2018) 13 Scale 320 : (2018) 12 SCR 204 : (2018) 10 SCC 498

Supreme Court Of India

Case No: MA No. 1607 Of 2018 In IA Nos. 14870, 14871 Of 2018 In Writ Petition (C) No. 19 Of 2018

Tehseen Poonawalla — APPELLANT

Vs

Union Of India & Anr — RESPONDENT

Date of Decision: Sept. 26, 2018

Citation: (2018) 13 Scale 320 : (2018) 12 SCR 204 : (2018) 10 SCC 498

Hon'ble Judges: Dipak Misra, CJ; A.M. Khanwilkar, J; Dr. Dhananjaya Y Chandrachud, J

Bench: Full Bench

Advocate: Indira jaising, Sunil Fernandes, Astha Sharma, Nupur Kumar, Anju Thomas, Priyansha Indra Sharma, Paras Nath Singh, Nishant R. Katneshwarkar, Deepa Kulkarni, S. Ganu, Anoop Kandari

Final Decision: Disposed Off

Judgement

Dr Dhananjaya Y Chandrachud, J

1.Ã, Ms Indira Jaising has moved a Miscellaneous Application seeking the following reliefs :

Ã¢â‚¬Å“a) Issue appropriate order or direction expunging/deleting the remarks made against the counsel for present intervenor/applicant herein that the

conduct of the counsel/applicant herein amounted to contempt or prima facie contempt of court, namely the following :

Ã¢â‚¬Å“74. The present case is indeed a case in point. Repeatedly, counsel for the petitioners and intervenors have attempted to inform the court that they

have no personal agenda and that they have instituted these proceedings to protect judicial independence. An aura of good faith has been sought to be

created by submitting that the true purpose of seeking an inquiry into the circumstances relating to the death of Judge Loya is to protect the district

judiciary(Ã¢â‚¬Â¦)Ã¢â‚¬â€‹

Ã¢â‚¬Å“75.[Ã¢â‚¬Â¦] Ms Jaising has joined the fray by requesting that this court to issue contempt notices to the Administrative Committee of the Bombay

High CourtÃ¢â‚¬Â¦Ã¢â‚¬â€‹

Ã¢â‚¬Å“76. [Ã¢â‚¬Â¦] The conduct of the petitioners and the intervenors scandalises the process of the court and prima facie constitutes criminal

contemptÃ¢â‚¬Â¦Ã¢â‚¬â€‹

Ã¢â‚¬Å“78. [...] The conduct of the petitioners and the intervenors is, as we have indicated, lacking in bona fides and reveals a misuse of judicial

process.Ã¢â‚¬â€‹

b) Issue appropriate order or direction issuing a clarification that the counsel for the present intervener/applicant herein has not furthered any

submissions or engaged in conduct which may amount to contempt of Court if it so deems fit;

c) Call for High Court of Bombay for the records of the meeting of administrative committee of the High Court dated 25.06.2014 to ascertain the

reasons for transfer to Judge Utpat, and to ascertain whether the consent of this HonÃ¢â‚¬â„¢ble Court was obtained or whether this HonÃ¢â‚¬â„¢ble Court

was kept informed that Judge Utpat was being transferred;Ã¢â‚¬â€‹

In the batch of cases which was adjudicated upon in the judgment of this Court dated 19 April 2018 Ms Jaising represented an intervenor (Admiral

Ramdas). Ã‚

2. Dr Abhishek Manu Singhvi appearing on behalf of the applicant submitted that whatever be the conduct of the other learned counsel who appeared

on behalf of the petitioners and intervenors before this Court, Ms Jaising has had no intention to make any submission that would denigrate or

scandalise the judiciary. It was urged that in making the submission about the Administrative Committee of the Bombay High Court she has not

scandalised the judiciary and that neither the written submissions nor theÃ, oral submissions would amount to scandalising the process of the Court.

Dr Singhvi urged that the observations contained in paragraphs 74, 75, 76 and 78 of the judgment (extracted in prayer clause (a) above) would appear

to give the impression that all counsel before the Court had made the same submission, though each of the arguing counsel had urged distinct

submissions.Ã, It has been submitted that Ms Jaising has a standing of over five decades at the Bar and that her track record would indicate anything

but a desire to denigrate the judiciary.Ã,

3. Mr Mukul Rohatgi, learned senior counsel appearing on behalf of the State of Maharashtra opposed the application.Ã, Learned counsel submitted

that each one of the submissions attributed to Ms Jaising was in fact urged by her in the course of the proceedings. Mr Rohatgi drew the attention of

the Court to prayer clause (c) of the Miscellaneous Application by which the records of the meeting of the Administrative Committee of the High

Court dated 25 June 2014 are sought to be summoned to ascertain the reasons for the transfer of Judge Utpat, and to ascertain whether the consent

of this Court was obtained (and whether it was kept informed of his proposed transfer). Mr Rohatgi submitted that prayer (c) is indicative of the fact

that the Miscellaneous Application has not been filed to pursue her own interest as counsel practicing before this Court but to revive the controversy

which has been settled by the judgment of this Court.

4. Faced with the objection raised by Mr Rohatgi in regard to prayer clause (c) of the application, Dr Singhvi submitted in the course of his rejoinder

that the prayer is being given up. It would be necessary to record Mr RohatgiÃ¢â‚¬â„¢s submission that if, as submitted by Dr Singhvi, the inclusion of

prayer clause (c) was inadvertent, the statement that the prayer is being given up ought to have been made before submissions commenced, prior to

an objection being raised on his behalf.

5. The first aspect of the matter which needs to be noted is that paragraph 75 of the judgment records the submission which was urged by the

applicant namely, that contempt notices should be issued to the Administrative Committee of the High Court.Ã, That such a submission was made is

not in dispute. In fact in paragraph 9.3 of the Miscellaneous Application, the applicant has repeated the submission, reiterating that it was urged before

this Court. Prayer clause (c) of the application as it was originally filed was based on that submission.Ã,

6. The application proceeds on the basis that the observations which were made in regard to the conduct of the petitionersandintervenors attach to the

applicant personally. In paragraphs 76 and 78, this Court has adverted to Ã¢â‚¬Å“the conduct of the petitioners and the intervenorsÃ¢â‚¬ (emphasis supplied).

If the applicant identifies with the intervenor, that is a matter of perception for counsel. The observations of the Court advert to the conduct of the

petitioners and intervenors.Ã, The findings of this Court are based on what was argued during the course of the hearing.

7. The Miscellaneous Application is accordingly disposed of.Ã,