

Rohtas Singh Vs. Commissioner, Agra Division and Others

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Court : Allahabad

Decided On : Nov-19-1996

Reported in : AIR1997All278; (1997)1UPLBEC307

Judge : B.M. Lal and ;B.K. Sharma, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 3, Rule 4 - Order 27, Rules 2 and 4; [Constitution of India](#) - Article 215; Code of Criminal Procedure (CrPC) , 1974 - Sections 4 and 24; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2; [Advocates Act, 1961](#) - Sections 35; [Contempt of Courts Act, 1971](#)

Appeal No. : Civil Misc. Writ Petition No. 28721 of 1996

Appellant : Rohtas Singh

Respondent : Commissioner, Agra Division and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Mukesh Prasad, Adv.

Judgement :

ORDER

B.M. Lal, J.

1. For determining the questions involved at this stage, relevant facts of these cases are as under :

In Rohtas Singh's case (supra), the Commissioner Agra Division Agra and certain other officials, are alleged to have violated an order of this Court dated 6-9-93 and in Gaon Panchayat's case (supra), the Distt. Panchayat Raj Adhikari Bulandshahar is alleged to have violated this Court's order dated 11-7-96 passed in both the aforesaid cases respectively, consequently this Court has issued notices to show cause as to why appropriate action be not taken against them, pursuant to which the contemnors appeared before this Court through Sri S. M. A. Kazmi, Additional Chief Standing Counsel.

2. An objection was raised that the State Law Officers i.e. Government Advocates, Deputy Government Advocates, Additional Government Advocates, Assistant Government Advocates, Standing Counsel, Chief Standing Counsel Additional Chief Standing Counsel and public prosecutors appointed by the State Government for appearing on behalf of State of U. P. cannot appear against the State of U. P. to defend the contemnors and therefore, Mr. Kazmi cannot be allowed to appear and defend the contemnors before this Court so long, he continues to be Additional Chief Standing Counsel for the State of U.P.

3. On this question Sri Kazmi addressed this Court pleading his entitlement to appear and defend the contemnors and in support of his pleadings he filed Government Order No, D-2714/7-Nyay-3-96-83/96 dated 12-9-96 whereby six State Law Officers have been appointed by the State Government for doing PAIRABI of all contempt cases in the High Court of Judicature at Allahabad and its Bench at Lucknow defending the State Government employees and other employees under the control of State of U. P. Mr. Kazmi contended that he being one of said six State Law Officers named in aforesaid G. O. has been authorised under Clause 4.07 of Legal Remembrancer's Manual 1975 by the State Government to defend the Government Officers and employees in contempt matters in this Court and thus he is legally entitled to defend the present contemnors in his capacity as Additional Chief Standing Counsel.

4. Having heard learned counsel for the parties the main questions which arise in these two cases for determination by this Court at this stage are :

1. Whether the State Law Officers referred to above appointed to conduct the cases on behalf of State of U.P. can be permitted or authorised by the Government and allowed by this Court to appear and defend the contemnors who happen to be the officers or officials of State Government ?

2. Whether the Government Order dated 12-9-96 referred to above can be said to have been legally issued in consonance with the statutory provisions ?

5. Before proceeding to answer these two questions, it is necessary to deal about the nature of the proceedings of contempt of Court cases, may be civil contempt or criminal contempt. In *Garvin v. Domus Publishing Ltd.* (1989) 2 All ER 344, where Hon'ble Walton J. relying upon *Polly v. Whetnam* (1880) 15 Chancery-Division 435 ruled.

'The standard of proof required in such a proceeding is the Criminal Standard of proof, because it is an extremely serious matter indeed for a person to be accused of contempt of Court. As a result of that, one can find in the cases a good many expressions, like Quasi-Criminal and expressions to the same effect. The apex Court in *T. C. Hingorani v. G. P. Misra*, 1967 (37) AWR 662 and this Court in Criminal Misc. Case No. 17 of 1950, *Phundi Singh v. Shri Ram*, decided on 14th March, 1951 have also used the expression Quasi-Criminal for contempt proceedings. Thus, the contempt of Court proceedings are of Quasi-Criminal nature. Here it will not be out of place to state that under Article 215 of the [Constitution of India](#) High Court is a Court of record and also exercises power to punish for contempt itself. Thus, High Court has got 'Plenary' Jurisdiction which means full, entire, complete, absolute, perfect and unqualified and therefore, in exercise of its plenary power with a view to meet the ends of justice High Court may evolve its own procedure with a condition that the procedure so evolved be not oppressive being in derogation to the statutory and constitutional provisions. Thus, the contempt proceedings being Quasi-Criminal nature it is neither fully criminal nor civil but in between the two mixed procedures.

6. Now dealing with the legal position it is not disputed that the appointment of State Law Officers referred to above is governed not only by the provisions of Legal Remembrancer's Manual 1941 (Old Manual) and Legal Remembrancer's Manual 1975 (the new Manual) but also by the Statutory provisions of Section 24 of the Code of Criminal Procedure, Order XXVII Rules 2 and 4 read with Order III Rule 4 of Civil Procedure Code and by the provisions of other allied laws including Section 35 of Advocates Act 1961.

7. Since aforesaid appointments are governed by the statutory provisions hence the respective offices held by the State Law Officers referred above continue to be civil post under the State of U. P. and as a necessary corollary thereof the appointing authority i.e. State Government of U. P. in the instant case, is bound to follow and observe the statutory provisions and therefore, these appointments must satisfy the test of professional ethics enumerated under the [Advocates Act, 1961](#).

8. The term 'public prosecutor' is defined under Section 2(u) of the Code of Criminal Procedure, 1973 (for short the Code) and means any person appointed under Section 24 of the Code and includes any person acting under the directions of a public prosecutor. Though the nomenclature of Government Advocate etc. is different from the Public Prosecutor yet the fact remains that these appointments are governed under Section 24 of the Code. The sub-clause (1) of Section 24 begins with the words, for every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, For conducting in such Court, any prosecution, appeal or other.... On the basis of this statutory provision there is no difficulty in reaching to the conclusion that the Government Advocate which expression includes Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, who are appointed by the State Government for conducting cases in the High Court on behalf of State Government have been appointed under Section 24 of the Code. Thus, even if Clause 4.07 of the Legal Remembrancer's Manual 1975 provides that under special permission of Government, Government Advocates can appear to defend the contemnors, the question arises whether the law officer

appointed under Section 24 of the Code can be permitted to appear and defend the contemnors against the State ?

9. In this context for the brevity of the case the relevant clauses of Legal Remembrancer's Manual 1941 i.e. Clauses 41, 45, 58 and 69 and Clauses 4.05, 4.07 of L. R. Manual 1975 are reproduced below :

'41. The duties of the Government Advocate as Public Prosecutor are :--

1.

2.

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4.

5. to conduct personally in the High Court on behalf of the Crown all cases of Contempt of Court.'

'45. (1) The Government Advocate shall not appear for the defence in any criminal or quasi- criminal case or proceeding, nor shall he advise any private party regarding any criminal case in Agra. In other respects he is permitted to practice without restriction.'

'58. (1) The Deputy Government Advocate shall not appear for the defence in any criminal or quasi-criminal cases or proceeding, nor shall he advise any private party against the prosecution in any criminal cases in Agra. In other respects he is permitted to practice without restriction.'

'69. (1) The Assistant Government Advocate shall nor appear for the defence in any criminal or quasi-criminal case or proceeding, nor shall he advise any private party against the prosecution in any criminal case in Agra. In other respects he is permitted to practise without restriction.'

10. The above referred restrictions also find place in Chapter IV of Legal Remembrancer's Manual 1975 which read as under :

'4.05. Duties of Government Advocate :--Subject to the provisions of this Chapter, the duties of the Government Advocate shall be :--

1.

2.

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5. to appear in the High Court in all cases of Contempt of Court in which he is required to appear under the rules or orders of the High Court.'

4.07. Certain restrictions :-- The Government Advocate which expression, in this rule, includes an Additional Government Advocate, Deputy Government Advocate or Assistant Government Advocate, shall have the right of private practice but shall not, except under special permission of the Government, appear for the defence in any criminal or quasi-criminal case or proceedings nor shall be advise any private party regarding any criminal case which might be pending or be likely to be instituted in Uttar Pradesh;'

11. Relying upon aforesaid clause 4.07 of Legal Remembrancer's Manual 1975 Kazmi contended that the Government Order dated 12-9-1996 referred above is protected under the special provision of clause 4.07 of the manual.

12. Before dealing with this contention raised by Mr. Kazmi it is relevant to point out that this is well settled that the contempt proceedings initialed against the government officials either under Article 215 of the [Constitution of India](#) or under the Contempt of Courts Act 1971 or even under Section 228 of IPC are all quasi-criminal proceedings and a Division Bench of this Court comprising Hon'ble Mr. Justice Dayal and Hon'ble Mr. Justice Desai in Criminal Misc. Case No. 17 of 1950, Phundi Singh v. Shri Ram decided on the 14th March. 1951, ruled that the Government Advocate could not defend a Government servant who was being prosecuted for Contempt of Court and the State could not direct the Government Advocate to appear for the contemnors. In Phundi Singh (supra) this Court

considered the provisions of Clauses 41 (5), 45, 58 and 69 of Legal Remembrancer's Manual 1941 and the present provisions of Cls. 4.05 and 4.07 of Chapter IV of Legal Remembrancer's Manual 1975 are analogous to the same and therefore, the contention of Sri Kazmi that under the special permission of Government by means of aforesaid Government Order, the State law officers named in the said G. O. are entitled to appear and defend the Government Servants in contempt proceedings is of no avail.

13. It may also be pointed out that aforesaid Division Bench decision of this Court in Phundi Singh (supra) has been upheld by a Constitution Bench of apex Court in T. C. Hingorani's case (supra).

14. In this regard it will not be out of place to mention that the prohibition for appearing and defending Government Officials in contempt matters applies not only in cases where the contempt proceedings are drawn suo motu but also in cases where contempt proceedings are drawn on the application of the parties and notices for contempt are issued.

15. However, this prohibition does not mean that the State Government cannot extend legal aid to the Government Officials in contempt matters for their defence but in suitable cases where the Legal Remembrancer or the Distt. Magistrate, as the case may be, may consider the Government Officials' request and may make recommendation to the State Government for appointing special counsel to defend the Government officers or officials in contempt cases but such special counsel cannot be from amongst the State Law Officers referred above. However, such special counsel may be appointed from amongst the other members of Bar.

16. Mr. Kazmi then contended that above mentioned prohibition may apply to the Public Prosecutors, Government Advocate, Additional Government Advocate, Deputy Government Advocates but the same cannot apply to the Chief Standing Counsel, Additional Chief Standing Counsel and Standing Counsel who are appointed on civil side and he being Additional Chief Standing Counsel has been legally nominated by the State Government to appear and defend the Government officials in the contempt proceedings and the aforesaid Government Order is in consonance with aforesaid Clause 4.07 of L. R. Manual 1975.

17. As regards the Legal position of L. R. Manuals both of 1941 and 1975, a bare perusal of preface of L. R. Manual 1975 makes it crystal clear that the provisions of Manual are not in the nature of statutory Rules but are executive instructions of the Government. Further, in T. C. Hingorani's case (supra) the Constitution Bench of the apex Court has also ruled that these Manuals have no statutory force of law. This being the settled legal position, the question arises as to whether on the strength of aforesaid Clause 4.07 of L. R. Manual 1975 can Government Order be issued in violation of statutory provisions of Sec-10 24 of the Code, Order XXVII, Rules 2 and 4 read with Order III, Rule 4, CPC and Section 35 of the Advocates Act ?

17A. In this context it may be made clear that the contempt proceedings being quasicriminal proceedings it is for the State to prosecute the contemner therefore, it is the counsel for the State who has to conduct contempt proceedings in the High Court on behalf of the State. In this context we may refer, what Lord Denning M. B. stated in *Crompton Amusement Machines Ltd. v. Commissioner of Customs and Excise*, (1972) 2 All ER 353 at p. 376 which is as follows :

'Many barristers and solicitors are employed as legal advisers, whole time by a single employer. Sometimes that employer is a great commercial concern. At other times it is a government department or a local authority. It may even be the government itself, like the Treasury Solicitor and his staff. In every case these legal advisers do legal work for their employer and for no one else. They are paid, not by fees for each piece of work, but a fixed annual salary. They are, no doubt, servants or agents of the employer.

.....

They are regarded by the law and in every respect in the same position as those who practise on their own account. The only difference is that they act for one client only and not for several clients. They must uphold the same standards of honour and of etiquette. They are subject to the same duties to their client and to the Court. They must respect the same confidence. They and their clients have the same privileges.'

18. Therefore, the moment any advocate is appointed by the State Government to conduct the cases on behalf of State Government in the High Court, the nomenclature may be Government Advocate for criminal side and Chief Standing Counsel or Standing Counsel for the civil side, but the fact remains that he becomes counsel of one client i.e. State of U.P. in the instant case and when a client retains a counsel to act for him he thereby prevents him from acting for his adversary, and such counsel can work for only one client that is the State. The office held by Government Advocate and the Standing Counsel is a public office of trust and therefore, like any other public office, is susceptible to misuse and corruption if not properly insulated. It is an office of responsibility more important than many others because the holder is required to prosecute with detachment on the one hand and yet with vigour on the other. When advocates are appointed to these offices, they have certain professional and official obligations and privileges. Therefore, once a lawyer is appointed Government Advocate or Standing Counsel by the State Government of U.P. it is expected of him to follow the settled norms of professional ethics and etiquette and protect the interest of the Government of U.P. from which they are getting remunerations hence so long they are continuing in the office of Advocate General of UttarPradesh, they cannot and should not change sides by appearing and defending contemnors which is forbidden in law.

19. In contempt proceedings which are quasi criminal proceedings, it is for the State to prosecute the contemnors, therefore, the contemnors, may be government officials, become adversary to the State in the contempt case, consequently the counsel engaged for the State stands prevented from acting for the adversary of the State even in such matters.

20. Further, under Section 35 of the Advocates Act, advocates have to maintain the high standards of noble and honourable profession to represent interest of only one party before the Court and to ensure that they do not represent conflicting interest before the Court. The advocates are also the officers of the Court and the purity of the administration of justice not only depends upon the integrity of the Judges but also on the honesty of the Bar as well. Thus, the high standards of the profession demand that once he is engaged by the State to represent the interest of State before the High Court by virtue of high standards he is professionally

bound to represent the interest of State alone and not of its adversary so long he continues to be engaged for the State.

21. Furthermore, under Order XXVII, Rule 2, CPC persons, being ex officio or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be there recognised agents by whom appearances, acts and applications under CPC may be made or done on behalf of the Government, under Rule 4 of Order XXVII CPC the Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court. Under Rule 4 of Order III, CPC. No, pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person and every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader as the case may be and filed in Court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

22. Thus, as per the above referred provisions of Civil Procedure Code once a counsel is engaged for the State he shall continue to remain authorised agent for the State until his engagement is determined by the client or pleader in writing with the leave of the Court, therefore, State Law Officers i.e. Chief Standing Counsel, Additional Chief Standing Counsel and Standing Counsel appointed on civil side by the State of U. P. continue to remain authorised agent for the State until either they resign or their appointment is terminated or comes to an end and accordingly in writ proceedings in which they are representing the State of U.P. if during pendency of those very proceedings, the proceedings for contempt are also drawn against the government official in which the State has to prosecute the contemnors, whether such, Chief Standing Counsel, Additional Chief Standing Counsel and Standing Counsel can appear for prosecution and defence both, in such proceedings for contempt initiated during pendency of the writ proceedings? In the considered opinion of this Court the answer would be in negative and therefore, the impugned Government Order dated 12-9-96 appointing the Chief Standing Counsel, Additional Chief Standing Counsel and the Standing Counsel for appearing and defending government officials in contempt matters is clearly

violative of statutory provisions of Order XXVII Rule 2 and 4 read with Order III, Rule 4, CPC.

23. That apart, this matter has to be viewed from one more angle also. This Court has also been informed that in all contempt matters after seeking necessary permission from the State Government, the government officials are being defended by the State at the cost of State Exchequer. In the considered opinion of this Court this is not a sound practice and therefore, it has to be deprecated. The Public Officers are accountable for their negligence in discharge of official duties.

24. In *N. Nagendra Rao and Co. v. State of Andhra Pradesh*, AIR 1994 SC 2663: (1994 AIR SCW 3753) and *Lucknow Development Authority v. M. K. Gupta*, AIR 1994 SC 787 : (1994 AIR SCW 97) their Lordships of Apex Court has ruled that besides accountability the public officers are personally liable for negligence and misfeasance if they commit in discharge of their duties by violating Rules and Regulations etc. Thus, if the 4 Government officials violate orders of the Courts they are equally liable and accountable in that matter also. Therefore, they are not entitled to be defended at the cost of State Exchequer because it gives encouragement to them to act arbitrarily even in the matters settled by the Courts amounting to disobedience of the orders of the Courts. When contempt notices are issued to the Government Officials they take it as a chance to take a holy dip in Sangani at the cost of State Exchequer and thus it gives encouragement to the tendency of deliberately flouting the orders of the Courts. The total pendency figure of contempt cases in this Court is 21,127 on date 914,546 at Allahabad + 6581 at Lucknow) and this itself speaks in this regard.

25. The total pendency of contempt cases in the main seat at Allahabad and Bench at Lucknow is an eye opener demonstrating that the Government Officials have developed and cultivated habit of defying the orders of the Courts and such arrogant altitude certainly tells upon the efficiency if not integrity of the concerned officials of the State. In this regard it is needless to say that complying with the orders of the Court is not only part of duty but also is a constitutional obligation enshrined under our Constitution to respect the orders of the Court while maintaining the rule of law. In the democratic set up like ours' democracy is

deeply rooted and for which our India is known as basis of democracy in the whole world where the Government acts as a custodian of its people and, therefore it is common expectation of the people that the Government Officials shall protect the interest of the people in following and complying the orders of the Court, consequently the Government Officials are to be discouraged in disobeying the orders of the Court. If the tendency of extending monetary help and free legal aid to the erring officials in contempt matters is continued it would lead to an impression that either the officials are having upper hand in the Government or are defying the orders of Court under secret instructions, therefore, incase the practice of extending monetary help to contemnners government officials for contesting contempt matters is allowed to continue it would certainly result in serious erosion of the rule of law as well as the constitutional obligation on the Government.

26. There should be a limit of violating the order of the Court. In the State of Uttar Pradesh, the Government Officials did not care even for the orders of the apex court in Writ No. 28894 of 1991, Suresh Chandra v. Chief Secretary and others decided on 2-1 -92, where the order passed by this Court merged in the order passed by the apex Court in favour of petitioner Suresh Chandra but compliance of that order could be possible only when contempt proceedings were drawn against the Chief Secretary and Jail Secretary of U. P. Government against which they twice approached the apex Court and thereafter ultimately appeared before this Court and complied with the order of this Court as well as the apex Court. These are very sorry state of affairs.

27. Therefore, in the considered opinion of this point, the government officials against whom Contempt notices are issued should personally incur the expences of contempt proceedings and only thereafter if they are honourably exonerated the amount spent may be reimbursed to them. It will naturally discourage the tendency of flouting the Court orders by the Government officials. 28. As far as extending legal aid to such government officials to concerned the State Government may prepare a panel of lawyers to defend the government officials in contempt matters but it cannot include in that panel the Government Advocates, Additional Government Advocates, Deputy Government Advocates, Assistant Government Advocates public Prosecutors, Additional/Assistant Public

Prosecutors Chief Standing Counsel, Additional Chief Standing Counsel, Standing Counsel or any other counsel who is continuing under engagement for the State. In case, such State Law Officers will be allowed to be included in that panel, the Government employees who are facing prosecution for corrupt practices may also demand similar protection from, the State.

29. In view of the discussions made above this Court is of the considered opinion that the impugned Government Order dated 12-9-96 issued under the Legal Remembrancer's Manual is not in consonance with the statutory provisions of Section 24 of the Code of Criminal Procedure, Order XXVII Rules 2 and 4 read with Order III Rule 4 CPC and Section 35 of the Advocates Act. The Provisions of Manual having no statutory force of law, the above referred provisions of Criminal Procedure Code, Civil Procedure Code and Advocates Act which have got statutory force of law would prevail over the Manual to the extent of conflict. In *Harpal Singh Chauhan v. State of U.P.*, (1993 (3) SCC 552 : (AIR 1993 SC 2436) apex Court ruled that the statutory provisions would prevail over the Manual in case of conflict.

30. It is not that this Court is taking this view for the first time by inventing something new but similar view has already been taken by the apex Court in *Hingorani's case* (supra) and by this Court in *Phundi Singh v. Shri Ram* (supra) and we are conscious of the settled legal position that the Courts, are not to legislate but to interpret the law and state the common law as Court believes that common law represents the common sense upon which the whole structure of law stands.

31. Before parting with the case we are constrained to record our strong displeasure on the trend of State Law Officers that although during the course of arguments this legal position was made clear to the learned counsel representing the contemnors that the State Law Officers referred above cannot appear and defend the contemnors and their appearance for contemnors is in contravention with the legal position settled in above referred decisions, despite that they did not change their attitude and continued their appearances whereas it was expected of them to have suspended their appearances on behalf of contemnors at least till

delivery of the judgment in this case.

32. In the instant case since no objection was raised with regard to appearance of Advocate General and Additional Advocate General for contemnors/government officials, hence we have not dealt with that aspect of the matter. However, if and when such occasion would arise the same shall be dealt with suitably.

33. In the premises aforesaid, the impugned Government Order dated 12-9-96 cannot be allowed to stand consequently the same is quashed to the extent it relates to the State Law Officers other than Advocate General and Additional Advocate General. Accordingly the objection is allowed and it is held that Government Advocates and Standing Counsel referred above cannot be allowed to appear and defend the government officials against whom notices for contempt are issued. It is further held that no monetary help can be extended from State Exchequer to such government officials towards litigation expenses in contempt proceedings and the expenses are to be incurred personally by the government officials concerned which would be reimbursed to them subsequently if they are honourably exonerated in contempt proceedings.

34. Now, the Government Officials concerned in this case are granted a fortnight's time from today to engage a counsel of their choice for their defence in the contempt, proceedings. List these cases for further hearing and orders on 5-12-96.

35. Office is directed to send copies of this order to the Chief Secretary and Law Secretary of U.P. State for echoing the feelings of the Court to the Government of Uttar Pradesh and to ensure compliance of this order by incorporating necessary corrections in the relevant Govt. Orders issued in this regard and for intimating all government officials cautioning them for future and not for consigning this order to the dust-bin of the U. P. Secretariat.

36. Order accordingly.