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In Re: District Judge

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Court : Orissa

Decided On : Dec-15-2008

Reported in : 2009(I)OLR352

Judge : B.S. Chauhan, C.J. and; Indrajit Mahanty, J.

Appellant : In Re: District Judge

Judgement :

B.S. Chauhan, C.J.

1. The Puri Bar Association, Puri -a registered Association of the District Court Advocates, submitted a representation/ complaint dated 24.11.2008 by Fax through its Secretary addressed to the Hon'ble Chief Justice of Orissa High Court & other companion Judges of the Court, seeking transfer of the District Judge, Puri on the ground that he misbehaved with Advocate, namely, Shri Manoj Kumar Mohapatra, while conducting the proceedings peacefully in Election Misc. Case' No. 28 of 2007 before the said Court on 21st November, 2008. A requisition signed by large number of Advocates was submitted to the Secretary of the Bar Association and accordingly its President Shri Aditya Hrudaya Mishra, called a General Body meeting on 22.11.2008 which passed Resolution No. 25 raising the grievance against the District Judge, Puri and deciding to cease work in his Court and continue with the same till the District Judge is transferred from the District Judgeship, Puri. A copy of the Resolution was also annexed with the representation/complaint.

2. This Court on administrative side, asked the District Judge, Puri to submit a report on factual aspects, which led to the aforesaid incident. The District Judge Submitted report on 24.11.2008 itself by Fax explaining the genesis of the cause and stating that while the proceedings were peacefully going on in the said Election Petition No. 28 of 2007, Shri Manoj Kumar Mohapatra, Advocate, appearing for the Election petitioner insisted to place reliance and to take into consideration the affidavit of P.W.5 Shri Fagunath Khatei. However, the Court was not inclined to consider the same for the reason that though it has been attested by Notary Shri Sashi Sekhar Das and the deponent had been identified by Shri Manoj Kumar Mohapatra, learned Advocate appearing for the Election petitioner, the deponent has not put his signature on the affidavit. Shri Mohapatra along with other advocates insisted to take the said affidavit into consideration in spite of the same having not been signed by the deponent and as the District Judge did not succumb their pressure, they started shouting slogans, and forced the District Judge to stop the proceedings of the Court. Subsequently, the lawyers misbehaved with the District Judge, Orderly Peon Shri Jagannath Padhi, and created unruly scene. The lawyers who adopted such unwarranted attitude included the President of the Bar Shri Aditya Hrudaya Mishra and Secretary of the Bar Shri Bhagaban Mishra also.

3. In order to verify the facts, this Court on administrative side found it necessary to summon the original record of the said Election Petition and it was found that in the said Election Petition, one affidavit dated 20.08.2008 had been filed by Fagunath Khatei (P.W.5) to support the election petitioner. It had been sealed and signed by the Notary. Each page of it had been signed by Shri Sashi Sekhar Das, Notary, Government of India and he had put his seal on each page of the affidavit. The deponent had been identified by Shri Manoj Kumar Mohapatra, Advocate. However, it does not bear the signature of the deponent, which has been left blank. The last part i.e. the verification of the affidavit indicates that the said affidavit had been prepared on the instruction of the deponent and after going through the contents thereof he had signed the affidavit. The last part of the affidavit reads as under:

That this affidavit is written as per my instruction and after going through the contents of the affidavit I have signed the affidavit on ... of August 2008'... (Deponent)

(Emphasis added)

Therefore, the affidavit does not contain either the date or the signature of the deponent.

4. In such a fact situation, the question arose, as to whether the learned Counsel appearing for the election petitioner could insist or place reliance on such affidavit' or could raise any grievance against the Presiding Officer/ District Judge, Puri, and as to whether the Bar Association could pass a resolution to go on strike for such a cause, till their demand is accepted.

5. In view thereof, considering the gravity of the matter, the matter was placed before the larger Bench. Prima facie we were of the view that their was no occasion for the Advocate Shri Manoj Kumar Mohapatra to insist upon for accepting the said affidavit, which had not been signed by the deponent. Moreover, it was highly undesirable that such an affidavit had been notarised by the Notary without any sense of responsibility. The deponent, who had not signed the affidavit has also been identified by the learned Counsel for the election petitioner, Shri Manoj Kumar Mohapatra. It was a matter of grave concern for all of us. Thus, we issued notices to the President, Puri Bar Association, Secretary, Puri Bar Association, Mr. Manoj Kumar Mohapatra, learned Advocate who had identified the deponent without his signature and Mr. Sashi Sekhar Das, Notary, who notarized the affidavit without the signature of the deponent. In pursuance thereof, they have entered appearance. The President, Puri Bar Association, Opposite Party No. 1 is being represented by Mr. Yeeshan Mohanty and Gopal Krushna Mohanty, The Secretary, Puri Bar Association, Opposite Party No. 2 is being represented by Mr. GangadharTripathy, Mr. Manoj Kumar Mohapatra, Opposite Party No. 4 is being represented by Mr. Sanjit Mohanty, Sr. Advocate and Mr. Sashi Sekhar Das, Notary, Opposite Party No. 3 is being represented by Mr. B.K. Ray. Learned Counsel for all the Opposite Parties have not advanced their arguments on factual issues but tendered absolute and unconditional apology

in writing on behalf of their respective clients. We have considered the same.

6. The Supreme Court has repeatedly held that the lawyers' strikes are illegal and for that effective steps should be taken to stop such growing tendency. In Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay and Ors. : AIR 1984 SC110 ; Tahil Ram Issar Das Sadarangani and Ors. v. Ramchand Issardas Sadaranganl and Anr. : AIR 1993 SC1182 ; Common Cause, A Regd. Society v. Union of India : (1994)5SCC557 ; In re: Sanjeev Dutta, Deputy Secretary, Ministry of Information & Broadcasting, New Delhi : 1995 CriLJ2910 ; Indian Council of Legal Aid & Advice and Ors. v. Bar Council of India and Anr. : [1995]1SCR304 ; K. John Koshy and Ors. v. Dr. Tarakeshwar Prasad Shaw : (1998)8SCC624 ; and Ex. Capt. Harlsh Uppal v. Union of India and Anr. AIR 2003 SC 739, Hon'ble Supreme Court held that the advocates have no right to go on strike. The Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their board even in the absence of lawyers. In other words, Court must not be privy to strikes or calls for boycotts. It was held that if a lawyer, holding a vakalatnama of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay to his client for loss suffered by him. In spite of repeated pronouncements by Supreme Court, the strikes have continued unabated.

7. The dispensation of justice must not be stopped for any reason. The strikes by lawyers have lowered the image of the judiciary in'the eyes of the general public. The Supreme Court has held that right to speedy justice is included in Article 21 of the Constitution of India. In Hussainara Khatoon v. Home Secy., State of Bihar : 1979 CriLJ1036 ; and A.R. Antulay and Ors. v. R.S. Nayak and Anr. : 1992 CriLJ2717 ; and Raj Deo Sharma v. State of Bihar : 1998 CriLJ4596 , it was held that the litigant has a right to speedy justice. The lawyers' strike, however, deny these rights to the litigants.

8. Our Constitution provides for an independent and efficient justice delivery system. Delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the capability of the system to impart justice in an

effective manner.

9. Jn R.D. Saxena v. Balram Prasad Sharma AIR 2000 SC 2912, the Hon'ble Supreme Court held as under:

In our country, admittedly, a social duty is cast upon the legal profession to show the people beacon (sic beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred upon him under the judicial system prevalent in the country.

10. In Mahabir Prasad Singh v. Jacks Aviation (P) Ltd. : AIR 1999 SC287 , the Supreme Court held that it is the solemn duty of every Court to proceed with the judicial business during Court hours and no Court should yield to pressure tactics or boycott calls or any kind of browbeating. The Court held as under:

If any counsel does not want to appear in a particular Court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that Court so that the party can engage another counsel. ut retaining the brief of his client and at the same time abstaining from appearing in that Court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate.

xxx xxx xxAt any rate, no Advocate can ask the Court to avoid a case on the ground that he does not want to appear in that Court.

11. As the good sense prevailed and all the four Opposite Parties tendered absolute and unconditional apology and the learned Counsel representing all the Opposite Parties, who are respected members of the Bar, assured us that such unwarranted incident would not be repeated, we accept their apology and drop the proceedings. Shri Sashi Sekhar Das, the Notary has given the undertaking that he

would not repeat the same mistake in future, he must stick to the said undertaking to avoid any action against him in future.

I. Mahanty, J.

12. I agree.

S.C. Parija, J.

13. I agree.

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