

Sikkim High Court Gulshan Rai Nagpal vs Principal, Government Law ... on 28 August, 2000 Equivalent citations: 2002 CriLJ 171 Author: A Deb Bench: R Dayai, A Deb JUDGMENT Anup Deb, J. 1. By filing this Civil Miscellaneous Application in Writ Petition No. 425 of 1998 (Gulshan Rai Nagpal v. Principal, Sikkim Government Law College and Ors.), the Principal, Government Law College respondent No. 1 (hereinafter referred to as the applicant) has, inter alia, made prayer to initiate necessary proceedings against the writ-petitioner, Gulshan Rai Nagpal (hereinafter referred to as OP) for making false statement on oath before this Court in Writ Petition No. 425 of 1998. By extracting paragraph 3 from writ petition No. 425 of 1998, the applicant, Principal, Government Law College has drawn the attention of the Court that Gulshan Rai Nagpal, the OP has made false statement on oath in the face of a representation submitted by the students of the Sikkim Government Law College including Gulshan Rai Nagpal, the OP which has been filed as Annexure A-1 to the application. Paragraph 3 of writ petition is extracted below :- 3. That the schedule time for conducting the evening classes for three year L.L.B. Course was from 4.00 p.m. onwards but the Principal, Sikkim Govt. Law College, all of a sudden in the midst of the session, arbitrarily, changed the evening classes hours from 4.00 p.m. onwards to 1.45 p.m. onwards on the assurance, that, students, who would be unable to attend classes because of change of classes hours, should be given attendance to appear in the final year Examination to be held in 1998. The Principal, thus bye-passed the norms of the North Bengal University, unlawfully and changed the schedule time of evening classes. 2. The relevant text of letter Annexure A-1 to the application signed by 22 students is reproduced below :- To The Principal, Sikkim Government College, Gangtok, Sikkim. 17th November, 1997. Sub: Change in timings for classes (3 yrs. course). Respected Sir, As we are facing some problems to attend evenings classes i.e. from 4 p.m. onwards, a meeting of the students was held today i.e. on 17th November, 1997 and it was decided that classes for Final Year (3 year course) may be conducted from 2. p.m. onwards. Therefore and accordingly it is requested to your kindness to change the timings of our said classes and we shall be very thankful if our request is accepted and classes are being conducted from 2 p.m. onwards. Thanking you in anticipation. Yours faithfully, Sd/- Students. The applicant stated that the OP made false statement on oath and has in the verification verified the same to be true to his knowledge. It is stated that the timings for classes were changed/ altered at the instance and/ or request of the students. Altogether, 22 students signed the application on 17th November, 1997 for change of time. The OP was one of the signatories to the said application at Sl. No. 7. The applicant stated that it is clear from paragraph 3 and Annexure A-1 extracted above that the OP has made false statement on oath and verified the same as true to his knowledge and as such the OP has committed an offence under Section 193 of the Indian Penal Code (in short IPC). 4. Vide order dated 4th August, 1998 passed in this Civil Misc. Application, this Court directed the issue of show cause notice to Gulshan Rai Nagpal, the O.P. as to why a proceeding under Section 193, IPC or under any other law shall not be initiated against him. Gulshan Rai Nagpal, the O.P. in his show cause stated that the

application filed by the Principal, Sikkim Government Law College, the applicant is in misconceived as he had not made any incorrect or false statement on oath in paragraph 3 of writ petition No. 425 of 1998. Gulshan Rai Nagpal, the O.P. admitted that he is one of the signatories in the Annexure A-1 filed by the Principal, Sikkim Government Law College to this misc. case. He stated that when difficulties of the lecturers to conduct classes for 5 years LLB. Course in the morning and classes for three years LLB. (Final Year) Course in the evening came to light, Gulshan Rai Nagpal along with seven others, whose names were shown typed in the representation being Annexure A-1, submitted the same before the Principal, applicant on his assurance that the students who would be unable to attend classes because of change of class hours, should be given attendance to appear in the final year examination to be held in 1998. Gulshan Rai Nagpal stated on oath in paragraph 3 of the said Writ Petition, "...but the Principal, Sikkim Govt. Law College all of sudden in the midst of the session, arbitrarily, changed the evening classes hours from 4.00 p.m. onwards to 1.45 onwards..." During course of hearing, Gulshan Rai Nagpal, the O.P. raised the following four points :- (a) Representation was submitted for starting the classes of the Law College from 2.00 p.m. instead of 4.00 p.m. but the Principal, Government Law College, the applicant, instead of 2 p.m. fixed 1.45 p.m. as the time for starting the classes. (b) There were 29 students in the class but the application (A-1) contained signatures of only 22 students. As such, the decision to start the classes at 1.45 p.m. was taken arbitrarily, and, that, even if the O.P. had signed on the representation, the Principal could not have changed the timings of the classes without the prior approval of the North Bengal University to which the Law College is affiliated. (c) Even if the statement is false, such false statement must pertain to judicial proceedings and that since the statement does not pertain to judicial proceedings, no action could be initiated against the petitioner. (d) Since the writ petition had not been admitted, it could not be said that the judicial proceedings had commenced and therefore, the affidavit could not be said to be filed in a judicial proceeding. 5. The learned Advocate General appearing for the Principal, Government Law College submitted that considering the substance of the averments contained in paragraph 3 of the writ petition read with the representation Annexure A-1, the explanation given by the O.P. cannot be sustained. According to the learned Advocate General, Gulshan Rai Nagpal's allegation in paragraph 3 of the writ petition "...but the Principal, Sikkim Govt. Law College, all of sudden in the midst of the session, arbitrarily changed the evening classes hours from 4 p.m. onwards to 1.45 p.m. onwards..." is a deliberate falsehood in the face of the representation Annexure A-1 which the O.P. suppressed in his writ petition and he has made misleading statement before this Court. By saying so, Gulshan Rai Nagpal deliberately created an impression before the Court that the Principal had suddenly changed the timings on his own without any application or representation having been made by anyone. The learned Advocate General submitted that the argument of the O.P. that the class was started from 2.00 p.m. instead of 1.45 p.m. will not exonerate him from making false statement in paragraph 3 of the writ petition. According to the learned Advocate General,

it is within the powers of Principal to take a decision with regard to the change of timings of classes, it being purely an internal administrative matter not needing permission from the North Bengal University and the Principal, applicant changed the timing on the representation of 22 students out of 29 students and changing of time from 2 p.m. to 1.45 p.m. that is, 15 minutes before the time suggested by majority of the students, is a minor variation and is of no significance. 6. As regards the third point, learned Advocate General submitted that the affidavit filed in a writ petition is a judicial proceeding. Regarding the last point the learned Advocate General submitted that admission by the Court for adjudication of a writ petition is immaterial. Once a writ petition is filed and registered, judicial proceeding commences. 7. Having considered the rival arguments advanced, we are of the view, that prima facie Gulshan Rai Nagpal deliberately made false statement on oath by making the following statement in paragraph 3 of writ petition which is supported by an affidavit:— . . . but the Principal, Sikkim Govt. Law College, all of a sudden in midst of the session, arbitrarily, changed the evening classes hours from 4.00 p.m. onwards to 1.45 p.m. onwards. . . . 8. The fact, that, in the representation, request was made for changing the timing from 4 p.m. to 2 p.m. and the Principal fixed the timing from 1.45 p.m. is of little significance. It is clear from the facts that the timing was changed on representation having been made and not suddenly by the Principal on his own. We also do not see any merit that writ petition is not a judicial proceeding. A person by filing a writ petition seeks judicial remedy in judicial manner from the highest Court of the State and as such a writ petition is a judicial proceeding. We also see no merit in the submission that a writ petition becomes a judicial proceeding only after it is admitted. It becomes a judicial proceeding as soon as it is filed in the Court and does not change its character by an order of admission. A writ proceeding commences with the filing of writ petition, the procedure for which is provided for under Chapter III, Rule 107 of the Sikkim High Court (Practice and Procedure) Rules, 1991. Rule 107 reads as follows:— 107. Petition to be made on motion after notice and procedure of its service:— (1) . All petitions under Article 226 of the Constitution of India shall be made on motion after notice to the parties affected thereby. (2) The notice referred to above shall ordinarily be served along with a copy of the Petition and annexures thereto, personally or through registered post with acknowledgment due on the concerned Department or officer and on other parties. An affidavit of service shall be filed along with the writ petition or afterwards before the same is placed for orders. (3) The main petition shall be accompanied with evidence that the notice referred to in Sub-rule (2) above has been duly served. (4) If the petition is not made on the date intimated to the opposite party or parties, it shall be incumbent on the petitioner to serve notice of his intention to move the petition in accordance with the provisions of Sub-rule (1) above. (5) Unless the Court otherwise orders for special reasons to be recorded, no interim order for stay or injunction shall be made against the State without filing evidence before the Court that the notice of the intention to move the Court at a specified time and for specified relief has been duly served on the designated officer of the State or local authority likely to be affected not less than 24 hours before the

petition is filed. (6) The notices referred to in Sub-rules (2) and (5) shall also be served upon the Advocate General or Government Advocate or the Standing Counsel concerned. (7) Where the delay caused by notice is likely to entail serious hardship an application may be made for an ad Interim ex parte order duly supported by an affidavit and the Court, if satisfied that the delay caused by notice would entail serious hardship may make an order ex parte upon such terms as to costs or otherwise and subject to such undertaking, if any, as the Court may think just and proper. Notice as contemplated under Rule 107 had been issued to the parties to the writ petition. Number of writ petition has been entered in terms of Rule 92, Rule 92 reads as follows :- 92. Procedure on receipt of petition:-(1) On receipt of a petition referred to in Rule 89 or Rule 91, the Deputy Registrar shall cause it to be entered in the Register of Criminal Writ Petitions and after entering the serial number thereof on the opening sheet, post the same, as soon as may be before the Court. (2) If such a petition is received or presented at a time when the Court is closed, it shall be laid before the Deputy Registrar who shall enter the same in the said register and place it for hearing as soon as may be, before a Judge of the Court in station. Rule 113 of the said rules provides that in all matters for which no provision is made by the rules, the provisions of the Code of Civil Procedure, 1908 shall apply mutatis mutandis, in-sofar as they are not inconsistent with the rules. It, therefore, follows that as a suit commences with the filing of a plaint, the proceedings in a writ petition commence with the filing of the writ petition. 9. In the case of N. Rajagopala Rao v. Murtuza Mujtahdi Editor, Anti-Corruption Weekly reported in (1974) 1 Andh LT 170 an objection was raised that unless and until the writ petition was admitted and rule nisi issued by the Court it cannot be said to be pending in the High Court. Andhra Pradesh High Court held under the Explanation (A) to Section 3 of the Contempt of Courts Act, 1971 a Civil Proceeding is said to be instituted by the filing of a plaint. A writ petition is a civil proceeding and will be said to have been instituted when such petition is filed in Court. There is no warrant to hold that a writ petition cannot be said to be filed or pending in the Court unless rule nisi is issued by the Court. A contemptuous publication may even influence the mind of the Court at the time of the admission of the writ petition and, therefore, the objection was rejected by the Andhra Pradesh High Court. 10. Section 193, IPC has two paragraphs. Sub-paragraph (1) of Section 193 applies only to false evidence given in judicial proceedings and sub-paragraph (2) applies to false evidence given in any other case. If writ petition cannot be said to be a judicial proceeding, it will definitely come within the purview of "in any other case" within the definition of Section 193 of IPC. Section 193, IPC reads as follows :- 193. Punishment for false evidence:-Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a Judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. 11. Having consid-

ered the facts and circumstances of the case, we are of the view that prima facie Gulshan Rai Nagpal deliberately made false statement on oath and we are of the opinion that it is expedient in the interest of Justice and to eradicate the evil of perjury that O.P. Gulshan Rai Nagpal should be prosecuted under Section 193, IPC for making the following statement in paragraph 3 of the writ petition No. 425 of 1998 which is supported by his affidavit:- ...but the Principal, Sikkim Govt. Law College, all of a sudden in midst. of the session, arbitrarily, changed the evening classes hours from 4.00 p.m. onwards to 1.45 p.m. onwards.... 12. We, therefore, direct that a complaint be filed by the Registrar General of this Court' before the Chief Judicial Magistrate, East and North, Gangtok against Gulshan Rai Nagpal accordingly. The Registrar General is authorised to sign the complaint. 13. The Civil Misc. Case thus stands disposed of. There will be no orders as to cost.