

Express Newspapers Pvt. Ltd. And Ors. vs Union Of India (Uoi) And Ors. on 5 November, 1985

Equivalent citations: 1985(2)SCALE1073, (1986)1SCC259, AIRONLINE 1985 SC 32

Bench: A.P. Sen, E.S. Venkataramiah, R.B. Misra

Order

1. We have gone through the application for review and the connected papers. The application is supported by an affidavit by the petitioner Jagmohan, former Lieutenant-Governor of Delhi who was respondent no. 2 in Writ Petitions Nos. 535-539 of 1980, decided on October 7, 1985. He seeks review of the judgment delivered by this Court principally on the ground that there is an error apparent on the face of the record as the judgment turns on certain arguments and statements attributed to Shri L.N. Sinha, learned counsel appearing for respondent no. 1, the Union of India and to Shri M.C. Bhandare, learned counsel appearing for respondent no. 3, Municipal Corporation of Delhi. The petitioner Jagmohan avers in the affidavit that the contents of Paras 1 to 3 are true to his knowledge and based on information derived from the counsel appearing in the case which he believes to be true. Along with the application for review he has annexed a letter dated October 12, 1985 addressed by Shri P.P. Singh who was assisting Shri L.N. Sinha asserting that the learned counsel had never advanced the arguments attributed to him in the judgment and a letter of Shri M.C. Bhandare dated October 13, 1985 addressed to Shri B.P. Maheshwari, Advocate-on-Record of respondent no. 3, Municipal Corporation of Delhi denying that he ever made the statement attributed to him at pp. 189-190 of the judgment delivered by one of us (Sen, J.). In the first letter, Shri P.P. Singh writes to say :

There are certain statements in the judgment which are attributed to Shri Sinha having made in the course of his arguments which do not seem to be correct as having been made by him. I have discussed the matter with Mr. Sinha and he agrees with me that it is not correct that he made the following statements during his course of arguments :

(a) He has further submitted that the land leased under the lease deed being nazul land is exclusively owned by the Union Government and the powers delegated to the former Chief Commissioner of Delhi under the lease deed Were no longer exercisable by the present Lt. Governor of Delhi.

...on the date on which the action was initiated in this case by the Lt. Governor against the petitioner the Lt. Governor had acted without authority or power.

(c) That "the Learned Counsel for the Union of India had disowned all the actions of the Lt. Governor".

(d) That the Learned Counsel for Respondent No. 1 i.e. the Union of India "contended that Lt. Governor, as an administrator had no function as the lessor or its delegatee".

(e) That "the Lt. Governor could not usurp the powers and functions of the Union of India in relation to the property of the Union and therefore had no functions in relation to the lease in question"

(f) That "the Central Government were contemplating to undertake a legislation and to provide for a Forum for adjudication of such disputes (Shri Sinha did inform the Court that he had advised the Central Government to undertake a legislation for empowering the Government to condone the violations of the nature involved in the present case in public interest) ...It is incorrect as stated at pages 90-91 of the Judgment that the Learned Counsel for the Union of India conceded that the Impugned Notice was invalid and had no legal effect.

In the second letter Shri M.C.Bhandare writes to Shri B.P. Maheshwari, and states :

Your clients, the Municipal Corporation of Delhi, have enquired from you as to how His Lordship Mr. Justice A.P. Sen, in his judgment has made the following observations :

Shri M.C. Bhandare, learned counsel appearing for respondent nos. 3 & 4, Municipal Corporation of Delhi and Zonal Engineer (Building), City Zone, Municipal Corporation, Delhi is fair enough to state that if the Express Newspapers Pvt. Ltd., were to make an application for modification of the sanctioned plan pertaining to the new building with respect to the basement and the working platform which according to the Municipal Corporation constitute double basements and the inter-connecting underground passage connecting the existing Indian Express Building, the same shall be considered having regard to consideration of justice and the needs of the petitioners and also taking into consideration that the new building has been constructed for installing a printing press and that the press so installed cannot function without the working platform which the Express Newspapers Pvt. Ltd., have already constructed, as well as the fact that the underground passage has been constructed by them for inter-connecting the new building with the existing Indian Express Building. He further states that the Municipal Corporation will compound the deviation which is minimum on payment of such composition fee as is payable under the bye-laws.

Learned counsel states that this shall not be treated as a precedent for others.

(pages 189-190 of the judgment) After setting out what he mentions were his submissions, he says :

...I never made the statements attributed to me. However, I did say that any cause shown by the petitioners would be considered in accordance with law. I may categorically state that there was no statement on my part that the deviations were minimum or that the Municipal Corporation of Delhi would compound the deviations on payment of such composition fee as was payable under the bye-laws. This assumes that the composition is permissible under the bye-laws, which was a disputed matter. I did not state that this should not be treated as a precedent for others. I never made an argument whereby I contended that there could be a discriminatory treatment either in favour or against the Indian Express.

He thus categorically asserts that there was no statement on his part that the deviations were minimum or that the Municipal Corporation of Delhi would compound the deviations on payment of such composition fee as payable under the Bye-laws. Further, he denies that he ever stated that composition of the deviations, according to his statement, by the Municipal Corporation of Delhi should not be treated as a precedent for others.

2. It is unfortunate that the two senior counsel have chosen this devious and, indeed, curious method of disowning arguments advanced by them. The proper thing for them to do would have been to file affidavits and either file petitions for review or have the matters listed, with the permission of the Court, for being mentioned. Instead, the modus operandi adopted was to address letters to the Advocates-on-Record who in turn have, for reasons best known to them, passed on the letters to the petitioner Jagmohan who was not their client at all. Advance copies of this petition laying emphasis on the aforesaid two letters of counsel appearing for other parties which, we do not doubt have the effect of scandalizing the Court, appear to have been given to the press for publication. We deprecate the conduct of those involved in this unsavoury event. We feel greatly concerned that the advocates of this Court who are not mere pleaders for parties but officers of the Court should stoop to such blameworthy tactics, unworthy of the high traditions of the noble and learned profession to which they belong. We feel grieved and not a little perturbed at all this.

3. Every word written in the judgment formulating the arguments advanced by Shri L.N. Sinha, learned counsel for respondent no. 1, Union of India is taken from our minute-books in which we noted the arguments of counsel almost verbatim during the course of hearing particularly because the matter involved questions of grave public importance. It is therefore highly improper for Shri P.P. Singh who was assisting Shri L.N. Sinha to suggest in his letter dated October 12, 1985 that the arguments attributed to learned counsel for respondent no. 1 in the judgment were never advanced by him. We cannot possibly act on any correspondence that passed between the petitioner Jagmohan and Shri P.P. Singh, Advocate-on-Record of respondent no. 1, Union of India or that between Shri M.C. Bhandare. and Shri B.P. Maheshwari, Advocate-on-Record for respondent no. 3, Municipal Corporation of Delhi.

4. As regards the allegation made by Shri M.C. Bhandare in his letter dated October 13, 1985 addressed to Shri B.P. Maheshwari, it is enough to mention that we recorded three statements made by counsel during the course of hearing, We distinctly remember that on September 14, 1983 during

the course of hearing we required learned counsel appearing for the parties to clarify the legal position. Two of the statements were recorded on September 14, 1983, one by Dr. L.M. Singhvi appearing for respondent no. 2, Lt. Governor of Delhi and respondent no. 5, Land & Development Officer as to the amount of conversion charges payable, and the other by Shri Arun Jaitley appearing for the petitioners regarding the willingness of the Express Newspapers Pvt. Ltd. to pay the conversion charges. The third statement by Shri M.C. Bhandare, learned counsel for respondent no. 3, Municipal Corporation of Delhi was recorded on September 15, 1983 signifying the willingness of the Municipal Corporation of Delhi to compound the deviations as they were minimal on payment of the usual composition fee. We have satisfied ourselves by perusing the Minutes of the Court proceedings as recorded by the Court Master on September 14 and 15, 1983 that the statements of all the three counsel were recorded in the minutes. We have no doubt that the statements were shown to all the counsel.

5. The typescript of the statement made by Shri M.C. Bhandare as recorded in the Minutes of the Court proceedings by the Court Master on September 15, 1983 reads as follows :

Shri Bhandare appearing for the Municipal Corporation is fair enough to say that the petitioner would make an application for modification of the sanctioned plan with respect to the basement and the working platform and the inter-connecting underground passage, the same shall be considered having regard to the consideration of justice and the needs and also taking into consideration that the building has been constructed for installing a printing press and that the press cannot function without the working platform which is already constructed. The learned counsel states that this shall not be treated as precedent for others. The Municipal Corporation will compound the deviation which is minimum on payment of whatever composition fee.

6. The statement attributed to Shri M.C. Bhandare, learned counsel for respondent no. 3 at pp. 189-190 of the judgment is virtually a verbatim reproduction of the correct draft prepared from the rough draft of the statement actually made by him in Court subject to certain grammatical variations signifying the willingness of the Municipal Corporation of Delhi to compound the deviations as they were minimal on payment of the usual composition fee.

7. We are constrained to observe that the review application is lacking in bona fides, based on false averments and constitutes a flagrant abuse of the process of the Court. The allegations contained in the aforesaid two letters are wholly inaccurate and totally false. Such attempts to question the sanctity of the Court proceedings unless ruthlessly embed will have the tendentious effect of making fearless dispensation of justice by the Courts in India almost impossible

8. We had been extremely indulgent with the petitioner Jagmohan, who was respondent no. 2 in the aforesaid Writ Petitions. In the joint counter filed by him on behalf of the respondents he made several statements which were far from accurate but we refrained from taking any action. This crude attempt on his part by filing this review application on totally false allegations is an attempt to subvert the course of justice. His conduct in casting serious aspersions on the Court by suggesting in

paragraph 10 that the delay in the pronouncement of the judgment was responsible for 'facts stated and submissions made on behalf of the respondent, having a decisive bearing on the case' escaping 'the attention of their Lordships' virtually amounts to gross contempt of Court. We cannot also help in observing that there has in this case been lamentably complete lack of candour and want of probity on the part of some the counsel in making factually incorrect statements and thereby casting aspersions on the Court.

9. The review application is accordingly dismissed.

10. Nothing that we have said will affect the separate judgments delivered by each one of us.

11. We direct the Registrar of this Court to keep the documents enumerated hereinafter in sealed covers under his custody, namely :

1. The minute-book of the Court proceedings maintained by the Court Master, dated September 14 and 15, 1983.
2. The original draft typescripts of the aforesaid statements prepared by the Court Master on September 14 and 15, 1983.
3. The shorthand notebook of the Private Secretary to Sen, J. dated September 15, 1983 from which the correct drafts of the statements actually made by the counsel on September 14 and 15, 1983 were prepared.
4. The fair drafts prepared by the Private Secretary of the said statements on September 15, 1983.

The Registrar shall also keep the original records of Writ Petitions Nos. 535-539 of 1980 in a separate sealed cover under his custody.