

REEPAK KANSAL

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v.

SECRETARY GENERAL, SUPREME COURT OF INDIA & ORS.

(Writ Petition (Civil) No. 541 of 2020)

JULY 06, 2020

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**[ARUN MISHRA AND S. ABDUL NAZER, JJ.]**

*Constitution of India – Art. 32 – The petitioner, an advocate, filed a writ petition during the pandemic of Covid-19 against the various officers of the Registry of the Supreme Court and Union of India seeking direction in the nature of mandamus directing the respondents not to give preference to the cases filed by influential lawyers/ petitioners, law firms etc. – Direction was also sought to give equal treatment to the cases filed by ordinary lawyers/ petitioners and not to point out unnecessary defects, refund the excess Court fee and other charges, and not to tag the cases without order or direction of the Court with other cases – Held: The petition as filed could not be said to be maintainable – The Petitioner has impleaded the Secretary General, various Registrars and Officers of the Registry, SCBA and Union of India – In contrast, writ is filed against the Supreme Court itself – He ought to have impleaded the Supreme Court of India in the Writ application through Secretary General – The omission indicates careless conduct on the part of the petitioner – The petition was filed in undue haste – The Supreme Court takes judicial notice of the fact that a large number of petitions are filed which are defective; still, the insistence is made to list them and mention is made that they should be listed urgently – It happens in large number of matters and unnecessary pressure is put upon the Assistants dealing with the cases – This is too much to expect perfection from them, particularly when they are working to their maximum capacity even during the pandemic – The staff is working despite danger to their life and safety caused due to pandemic and several of the dealing staff, as well as officers, have suffered due to Covid-19 – In general, it has become a widespread practice to blame the Registry for no good reasons – To err is human, as many petitions are filed with defects and defects are not cured for years together – In such situation when the pandemic is going*

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- A *on, baseless and reckless allegations are made against the Registry of the Supreme Court, which is part and parcel of the judicial system – There are no ground to entertain the petition – Thus, the petition is dismissed.*

- B *Advocate – Expectations from Advocates and the role of the Registry – Held: The members of the noble fraternity are expected to respect themselves first – They are an intellectual class of the society – what may be proper for others may still be improper for them, the expectations from them is to be exemplary to the entire society, then only the dignity of noble profession and judicial can be protected – The Registry is nothing but an arm of the Supreme court and an extention of its dignity – Bar is equally respected and responsible part of the integral system, Registry is part and parcel of the system and the system has to work in tandem and mutual reverence.*

D **Dismissing the Writ Petition, the Court**

- D **HELD :** 1. The petition as filed could not be said to be maintainable. The petitioner has impleaded the Secretary General, various Registrars, and officers of the Registry, SCBA, and Union of India in his writ application. In contrast, Writ is filed against this Court itself. He ought to have impleaded the Supreme Court of India in the Writ application through Secretary-General. The omission indicates careless conduct on the part of the petitioner. The petition was filed in undue haste. [Para 16] [466-D]

- F 2. This Court takes judicial notice of the fact that a large number of petitions are filed which are defective; still, the insistence is made to list them and mention is made that they should be listed urgently. It happens in a large number of matters, and unnecessary pressure is put upon the Assistants dealing with the cases. When petitions with defects are filed, it should not be expected that they should be listed instantly. To err is human and there can be an error on the part of the Dealing Assistants too. This is too much to expect perfection from them, particularly when they are working to their maximum capacity even during the pandemic. The cases are being listed. It could not be said that there was an inordinate delay in listing the matters in view of
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the defects. The Court functioned during the lockdown, the cases were scanned and listed by the Registry. The staff of this Court is working despite danger to their life and safety caused due to pandemic, and several of the Dealing Staff, as well as Officers, have suffered due to Covid-19. During such a hard time, it was not expected of the petitioner who is an officer of this Court to file such a petition to demoralize the Registry of this Court instead of recognizing the task undertaken by them even during pandemic and lockdown period. [Para 17][466-E-H]

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3. In general, it has become a widespread practice to blame the Registry for no good reasons. To err is human, as many petitions are filed with defects, and defects are not cured for years together. A large number of such cases were listed in the recent past before the Court for removal of defects which were pending for years. In such situation, when the pandemic is going on, baseless and reckless allegations are made against the Registry of this Court, which is part and parcel of the judicial system. This Court takes judicial notice of the fact that such evil is also spreading in the various High Courts, and Registry is blamed unnecessarily for no good reasons. It is to be remembered by worthy lawyers that they are the part of the judicial system; they are officers of the Court and are a class apart in the society. [Para 18][467-A-C]

4. This Court expects members of the noble fraternity to respect themselves first. They are an intellectual class of the society. What may be proper for others may still be improper for them, the expectations from them is to be exemplary to the entire society, then only the dignity of noble profession and judicial system can be protected. The Registry is nothing but an arm of this Court and an extension of its dignity. Bar is equally respected and responsible part of the integral system, Registry is part and parcel of the system, and the system has to work in tandem and mutual reverence. It is also expected from the Registry to work efficiently and effectively. At the same time, it is expected of the lawyers also to remove the defects effectively and not to unnecessarily cast aspersions on the system. [Para 20] [470-A-C]

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A CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 541 of 2020.

Under Article 32 of The Constitution of India

Tushar Mehta, SG, Piyush Beriwal, Kanu Aggarwal, Arvind Kr. Sharma and B.V. Balram Das, Advs. for Respondents.

B Petitioner-in-person.

The Judgment of the Court was delivered by

**ARUN MISHRA, J.**

C 1. The petitioner, who is an Advocate practicing in this Court, has filed the writ petition under Article 32 of the Constitution of India against various officers of the Registry of this Court and the Union of India. Prayer has been made to issue an appropriate Writ, Order or Direction in the nature of Mandamus directing the respondents not to give preference to the cases filed by influential lawyers/ petitioners, law firms, D etc. Prayer has been made to direct the respondents to give equal treatment to the cases filed by ordinary lawyers/ petitioners and not to point out unnecessary defects, refund the excess court fee and other charges, and not to tag the cases without order or direction of the Court with other cases. A prayer has also been made to direct the Secretary E General of this Court to take action against the erring officers for their involvement in the listing, clearing, and bench hunting.

2. It is averred in the petition that equal treatment has not been given to the ordinary lawyers/ litigants. They favour some law firms or Advocates for reasons best known to them.

F 3. The petitioner's first instance is that a Writ Petition (Civil) D. No. 10951 of 2020 was filed by him on 16.4.2020. The Registry pointed out three defects, i.e. (1) Court Fee of Rs. 530 was not paid, (2) Documents to be placed as per index, and (3) Details given in index were incomplete and annexures were not filed, matter to be rechecked.

G The petitioner had clarified vide email dated 18.4.2020 that he had paid the court fee of Rs. 730/- and there was no annexure with the petition. However, the petitioner was forced to pay more court fees to get the matter listed. Despite the letter of urgency, the Registry failed to register and list the writ petition. The petitioner requested the Secretary, Supreme Court Bar Association, about not listing the writ petition. On 27.4.2020, H the writ petition was listed before the Court.

4. The second instance given by the petitioner is that a Writ Petition (Civil) D.No.11236 of 2020 was filed on 12.5.2020, which has not been listed by the Registry till today. He was informed that there were no defects in the writ petition, but a copy of the writ petition was missing. After that, no update was given by the Registry. A

5. The third instance given is about Writ Petition (Civil) No.522 of 2020 (Diary No.11552 of 2020) filed by the petitioner on 20.05.2020. The Dealing Assistant pointed out defects on 26.5.2020. The defects were pointed out by the Dealing Assistant after six days of filing, though the application for urgency was filed in the petition. The following note was made by the Registry: B

“MATTER NEEDS TO BE RECHECK AS WHOLE INDEX IS BLANK, PETITION, AFFIDAVIT, VAKALATNAMA, MEMO OF APPEARANCE AND APPLICATION ALL ARE UNSIGNED AND DEFICIT COURT FEE ETC.” C

The petitioner clarified that the signed documents were already uploaded. The matter was urgent, and he had uploaded them again along with signed documents on 26.5.2020. Again the defects were pointed out on 29.5.2020 by the Dealing Assistant to the following effect: D

“APPLICATION IS NOT PROPER AS HEADING NOT TALLY WITH INDEX AND BE SPECIFIC ABOUT THE SUBJECT AND PRAYER OF APPLICATION.” E

The petitioner cured the defects on 29.5.2020. After that, the Dealing Assistant did not recheck the matter. On 2.6.2020, the petitioner made a call and requested the Branch Officer concerned to direct the Dealing Assistant to recheck the matter. On 2.6.2020, the matter was rechecked and numbered as Diary No.11552 of 2020. The case was verified on 6.6.2020 and listed for 6.7.2020 (computer-generated) which would make the case infructuous. The application for urgency was not considered. The petitioner was informed that the case was likely to be listed on 6.7.2020. He sent an email about the urgency. The Registry was not willing to list the Diary No.11552 of 2020 despite the application for urgency. Hence, the writ petition has been filed. F

6. It is averred that on 23.4.2020, W.P. Diary No.11006 of 2020 titled as *Arnab Ranjan Goswami v. UOI* was filed at 8.07 p.m. without annexure. The Registry had chosen not to point out any defects, and a special supplementary list was uploaded on the same day. The category G H

- A was not specified in the notification to be heard during a nationwide lockdown. No procedure was followed by the Registry for urgent hearing during the lockdown. The petitioner made a complaint to Secretary-General against illegal activities of the Registry but the same is without response.
- B 7. We have heard the petitioner. The present writ petition was initially listed for 18.6.2020, however on 17.6.2020; a letter was circulated by the petitioner that he was under the impression that Registry would call the petitioner to interact with the Registrar in order to appear and argue in person as per the procedure. Still, it was not intimated to the petitioner that Registry exempted the petitioner, and there was no need to interact with the Registrar. The petitioner was out of Delhi due to pre-arrangement and did not carry a soft or hard copy of the writ petition to argue the matter. The petitioner also prayed for time of six weeks to file annexure/ evidence, *i.e.*, complaint/ reminder concerning de-tagging of Writ, delay in checking and rechecking the matters, application, and reply under RTI regarding de-tagging, proof of excess court fee, etc. to prove his submissions before this Court. The prayer to adjourn the case was declined, and the case was listed for hearing on 19.6.2020. The petitioner was heard in person. He repeated the facts about the discrimination being meted out by the Registry of not listing the cases promptly.
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- E 8. We have also perused the files of the cases. Writ Petition (C) D. No.10951 of 2020 was filed on 17.4.2020 during the nationwide lockdown, under Article 32 of the Constitution of India with a prayer for the One Nation One Ration Card Scheme. It was heard and decided on 27.4.2020. The Union of India was directed to examine whether it was feasible for it to implement the Scheme at this stage or not and take appropriate decision in this regard, keeping in view the present circumstances. Accordingly, the writ petition was disposed of.
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- G 9. Although defects were noted, Writ Petition (C) Diary No.10951 of 2020 was listed, heard, and finally decided on 27.4.2020. It was filed on 17.4.2020. 18<sup>th</sup> and 19<sup>th</sup> April 2020 were the holidays. There were only five working days, and during the nationwide lockdown, the court functioning was minimal. The case was mentioned in the cause list on 26.4.2020 to be listed on 27.4.2020. Thus, it could not be said that there was delay much less inordinate one by the officials of the Registry in listing the matter mentioned above.
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10. Concerning the second instance, *i.e.*, Diary No.11236 of 2020, which was filed by petitioner on 9.5.2020, the Registry has noted several defects on 14.5.2020. The petition is still lying with defects. A

11. Concerning the third instance *i.e.*, Writ Petition No.522 of 2020 (D. No.11552 of 2020), the same was filed on 20.5.2020. Again, a defective petition and defects were pointed out by the Registry on 26.5.2020 that the whole index was blank. Petition, Affidavit, Vakalatnama, Memo of Appearance, and Application were all unsigned with a deficit court fee, etc. The petitioner removed the defects. However, other defects were caused, such as the application filed was not proper as heading did not tally with the index, and specific subjects and prayers were not mentioned. The defects were re-cured, and the petition was re-filed on 3.6.2020. The matter was processed and listed on 9.6.2020 and was heard and dismissed on 12.6.2020 as other matters on the similar issues were pending as such the matter was not considered to be necessary. The petitioner has not disclosed about listing of the case for 12.6.2020, and its decision and averred that the computer-generated date was 6.7.2020. The Registry did not follow the computer-generated date, and the case was listed for 12.6.2020 on which it was dismissed. The petitioner himself was responsible for 12-13 days of delay in removing the defects. B

12. As to case of Arnab Goswami, it was listed urgently in view of order of competent authority. It pertained to liberty and freedom of media. C

13. In the aforesaid circumstances, considering the ongoing pandemic caused by COVID-19, the Registry of this Court is working with less strength, and because of the facts described above and circumstances, we find that there was no justification for the petitioner to allege discrimination *vis-à-vis* to him and to favour any particular individual. The defects were there in all the three cases filed by the petitioner. D

14. The petitioner has filed this writ application in a hurry. When it was listed, he circulated a letter to the effect that, as per procedure, he expected that he would be called for interaction by Registrar of this Court to find out his fitness whether he could argue a case in person. The petitioner ought to know that he is an Advocate of this Court and argues the matter in this Court. As such, it was not necessary to summon him for adjudging his capability as to whether he could argue the case. E

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- A Be that as it may. Circulating such a letter was not appropriate at his stanceand why he doubted his ability to argue. There was no justification to entertain this kind of apprehension in mind. He ought to have been careful in circulating such a letter seeking a wholly unjustified adjournment.
- B 15. In the letter circulated by him, it was further stated that he wanted to collect the evidence and to file it, and for that purpose, he prayed for six weeks' time. The conduct indicates that the petitioner was careless and not serious whilehe made the allegations. He filed writ application without due inquiries, and without collecting the requisite material. Such conduct was least expected of an officer of this Court.Petitioner ought to have been careful before cast of unnecessary aspersions on the Registry and staff of this Court.
- C 16. The petition as filed could not be said to be maintainable. The petitioner has impleaded the Secretary General, various Registrars, and officers of the Registry, SCBA, and Union of India in his writ application.
- D In contrast, Writ is filed against this Court itself. He ought to have impleaded the Supreme Court of India in the Writ application through Secretary-General. The omission indicates careless conduct on the part of the petitioner. The petition was filed in undue haste.
- E 17. We take judicial notice of the fact that a large number of petitions are filed which are defective; still, the insistence is made to list them and mention is made that they should be listed urgently. It happens in a large number of matters, and unnecessary pressure is put upon the Assistants dealing with the cases. We find due to mistakes/carelessness when petitions with defects are filed, it should not be expected that they should be listed instantly. To err is human and there can be an error on the part of the Dealing Assistants too. This is too much to expect perfection from them, particularly when they are working to their maximum capacity even during the pandemic. The cases are being listed. It could not be said that there was an inordinate delay in listing the matters in view of the defects. The Court functioned during the lockdown, the cases were scanned and listed by the Registry. The staff of this Court is working despite danger to their life and safety caused due to pandemic, and several of the Dealing Staff, as well as Officers, have suffered due to Covid-19. During such a hard time, it was not expected of the petitioner who is an officer of this Court to file such a petition to demoralize the Registry of this Court instead of recognizing the task undertaken by them even during pandemic and lockdown period.

18. We see, in general, it has become a widespread practice to blame the Registry for no good reasons. To err is human, as many petitions are filed with defects, and defects are not cured for years together. A large number of such cases were listed in the recent past before the Court for removal of defects which were pending for years. In such situation, when the pandemic is going on, baseless and reckless allegations are made against the Registry of this Court, which is part and parcel of the judicial system. We take judicial notice of the fact that such evil is also spreading in the various High Courts, and Registry is blamed unnecessarily for no good reasons. It is to be remembered by worthy lawyers that they are the part of the judicial system; they are officers of the Court and are a class apart in the society. Regarding exemplary behavior from members of noble profession in *R. Muthukrishnanv. The Registrar General of the High Court of Judicature at Madras*, Writ Petition (C) No.612 of 2016 the Court observed concerning the expectation from gentlemen lawyers, thus:

“**23.** The role of Lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a Lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice delivered to his cause.

**24.** The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of legal profession requires an Advocate to remember that he is not over attached to any case as Advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognizing his

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- A rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A Lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair decision-making process. It is his duty to master the facts and the law and submit the same precisely in the Court, his duty is not to waste the Courts' time.
- B **25.** It is said by Alexander Cockburn that “the weapon of the advocate is the sword of a soldier, not the dagger of the assassin”. It is the ethical duty of lawyers not to expect any favour from a Judge. He must rely on the precedents, read them carefully and avoid corruption and collusion of any kind, not to make false pleadings and avoid twisting of facts. In a profession, everything cannot be said to be fair even in the struggle for survival. The ethical standard is uncompromisable. Honesty, dedication and hard work is the only source towards perfection. An Advocate conduct is supposed to be exemplary. In case an Advocate causes disrepute of the Judges or his colleagues or involves himself in misconduct, that is the most sinister and damaging act which can be done to the entire legal system. Such a person is definitely deadwood and deserves to be chopped off.
- C **40.** The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great responsibility. The Court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like *Brahmasatra* to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of the Court and take action in contempt and in case of necessity to impose appropriate exemplary punishment too. A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the Court. He is a privileged member of the community and a gentleman. He has to mainsail with honesty and sail with the oar of hard word, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental.
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**76.** Soul searching is absolutely necessary and the blame game and maligning must stop forthwith. Confidence and reverence and positive thinking is the only way. It is pious hope that the Bar Council would improve upon the function of its disciplinary committees so as to make the system more accountable, publish performance audit on the disciplinary side of various bar councils. The same should be made public. The Bar Council of India under its supervisory control can implement good ideas as always done by it and would not lag behind in cleaning process so badly required. It is to make the profession more noble and it is absolutely necessary to remove the black sheeps from the profession to preserve the rich ideals of Bar and on which it struggled for the values of freedom. It is basically not for the Court to control the Bar. It is the statutory duty of Bar to make it more noble and also to protect the Judges and the legal system, not to destroy the Bar itself by inaction and the system which is important pillar of democracy.”

(emphasis supplied) D

19. In *Kamini Jaiswal v. Union of India & Anr.* (2018) 1 SCC 156, it was observed:

“**24.....** In *Charan Lal Sahu v. Union of India*<sup>1</sup>, this Court has observed that in a petition filed under Article 32 in the form of PIL attempt of mudslinging against the advocates, Supreme Court and also against the other constitutional institutions indulged in by an advocate in a careless manner, meaningless and as contradictory pleadings, clumsy allegations, contempt was ordered to be drawn. The Registry was directed not to entertain any PIL petition of the petitioner in future.”

**25.** In *R.K. Anand v. Delhi High Court*<sup>2</sup> this Court observed that there could be ways in which conduct and action of malefactor was professional misconduct. The purity of the court proceedings has to be maintained. The Court does not only have the right but also an obligation to protect itself and can bar the malefactor from appearing before the Court for an appropriate period of time. There is a duty cast upon an advocate to protect the dignity of this Court not to scandalize the very institution as observed in the said decision.”

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<sup>1</sup> (1988) 3 SCC 255

<sup>2</sup> (2009) 8 SCC 106

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- A       **20.** We expect members of the noble fraternity to respect themselves first. They are an intellectual class of the society. What may be proper for others may still be improper for them, the expectations from them is to be exemplary to the entire society, then only the dignity of noble profession and judicial system can be protected. The Registry is nothing but an arm of this Court and an extension of its dignity. Bar is equally respected and responsible part of the integral system, Registry is part and parcel of the system, and the system has to work in tandem and mutual reverence. We also expect from the Registry to work efficiently and effectively. At the same time, it is expected of the lawyers also to remove the defects effectively and not to unnecessarily cast aspersions C on the system.

**21.** Thus, we find no ground to entertain the petition. We expect the petitioner to be more careful and live up to the dignity of the profession which it enjoys.

- D       **22.** We dismiss the petition and impose cost of Rs.100/- (Rupees One Hundred only) on the petitioner as a token to remind his responsibility towards noble profession and that he ought not to have preferred such a petition.

Ankit Gyan

Writ Petition dismissed.