

Sri Abani Kanta Ray vs State Of Orissa & Ors on 13 October, 1995

Equivalent citations: 1995 SCC, SUPL. (4) 169 JT 1995 (7) 467

Author: Jagdish Saran Verma

Bench: Jagdish Saran Verma, K Venkataswami

PETITIONER:
SRI ABANI KANTA RAY

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT 13/10/1995

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
VENKATASWAMI K. (J)

CITATION:
1995 SCC Supl. (4) 169 JT 1995 (7) 467
1995 SCALE (6) 41

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT J.S. VERMA, J. :

Leave granted.

This appeal by special leave is by the Chairman of the Orissa Administrative Tribunal to expunge certain remarks made against him in the Order dated 26.8.1993 in Original Application No. 102(C) of 1992 (O.A. 866/1992) by a Division Bench comprising of S.K. Misra, Vice-Chairman and U.N. Mallik, Member (Administrative)

of the Tribunal. That application was made by respondent No. 3 Dandanirodha Mishra for cancellation of his transfer. The transfer order was quashed by the Division Bench of the Tribunal. In making that order, strong adverse comments were made against the appellant as Chairman of the Tribunal.

The background is of some significance. After some controversy, a Bench of the Orissa Administrative Tribunal was created at Cuttack but its functioning led to litigation and therein the making of an order even by this Court about its functioning. However, some grievance persisted in those favouring creation of the Cuttack Bench and a contempt petition was filed by an advocate against the Chief Secretary to Government of Orissa, Ramakanta Rath and the Chairman of the Tribunal, A.K. Ray. That contempt petition (Org. Crl. Misc. Case No. 73 of 1992) was decided by an order dated 8.5.1992. Reference to this order of the High Court is made because of its reference in the impugned order of the Tribunal.

Respondent No. 3 D.N. Mishra was posted at the relevant time as Additional Secretary to the Revenue Divisional Commissioner, Central Division at Cuttack and in addition he held the charge of Additional Registrar of the Cuttack Bench of the Tribunal. Apparently, the appellant as Chairman of the Tribunal was not satisfied with the performance of D.N. Mishra as the Additional Registrar of the Tribunal. The appellant wrote a confidential letter dated 10.4.1992 to the Chief Secretary R.K. Rath recommending that any other officer may be deputed to function as the Additional Registrar. In that letter, the appellant had stated that the functioning of the Cuttack Bench of the Tribunal was unsatisfactory and could not improve because respondent No. 3 D.N. Mishra was not interested in doing this work and was only creating confusion and problems in spite of being explained everything by him as well as the registrar. The letter further stated that the attitude of D.N. Mishra was obstructive and, therefore, urgent action was necessary in compliance with the High Court's direction confirmed by the Supreme Court. The appellant concluded the letter by stating as under :-

"..... Sri D.N. Misra seems to be determined to undo our effort to hold circuit at Cuttack. You may take such action as you think fit against this officer. But I may also suggest the Secretary to R.D.C. (Central Division) or any other Officer to function as Additional Registrar, which we shall notify immediately."

This letter was written by the appellant to the Chief Secretary on 1.4.1992 and thereafter the contempt petition was finally heard in the High Court on 20.4.1992 and decided by order dated 8.5.1992. The High Court, in its order dated 8.5.1992, stated as under :-

"..... This apart, some affidavits of the practising Advocates have been filed stating that after the notification of 23.3.1992 had been issued, they had gone several times to the Additional Secretary for filing new cases, but he had refused to accept because of which they were compelled to file new cases at Bhubaneswar. Almost all the

members of the Bar who were present on the date of hearing on 20.4.1992 (it may be stated that quite a large number of members were so present) had also made a statement that though filing is being willy-nilly accepted since a few days, the case record is transferred to Bhubaneswar for registration and after it is numbered there, it can be taken up in the next circuit Bench of the Tribunal to be held at Cuttack. So, for urgent matters, a counsel has invariably to go to Bhubaneswar to obtain interim order."

The High Court then rejected the stand of respondent No. 1, the Chief Secretary as an eye wash. The order proceeded to hold that the Chief Secretary had violated the orders of the High Court which were affirmed by the Supreme Court. However, the High Court considered it appropriate to grant a further opportunity to the Chief Secretary to implement its order relating to establishment and functioning of a permanent Bench at Cuttack. The High Court did not hold anything against the Chairman of the Tribunal who was the 2nd respondent in the contempt petition. The High Court actually recorded its satisfaction with the action taken by the Chairman of the Tribunal and concluded as under:

"..... Secondly, we do hope that the Registry at Cuttack functions properly. We may also state that we have noted with satisfaction the statement made in the affidavit filed on 30.4.1992 that remedial measures in this regard, after knowing about the complaints from his Advocates, have already been taken by the Chairman."

There is thus nothing in the High Court's order against the Chairman of the Tribunal, the appellant, and in fact there is a record of its satisfaction with the steps taken by the Chairman to ensure proper functioning of the cuttack Bench in accordance with its directions. It is in this background the order dated 11.5.1992 was made by the State Government transferring D.N. Mishra to the post of Additional District Magistrate, Koraput, which had the effect of his ceasing to function as the Additional Registrar of the Cuttack Bench of the Tribunal.

Respondent No. 3 challenged his transfer order dated 11.5.1992 by an application made to the Tribunal. There was no allegation of any kind, much less of mala fides, against the Chairman of the Tribunal, in the application so made. On 15.5.1992, a Division Bench comprising of S.K. Misra, Vice-Chairman and U.N. Mallik, Member (Administrative) granted ex parte stay of the transfer order of D.N. Mishra as the Additional Registrar of the Cuttack Bench in spite of the above background. On 29.5.1992, the State Government filed an application in that proceeding for vacating the interim stay order stating therein the facts and circumstances in which D.N. Mishra had been transferred to facilitate proper functioning of the Cuttack Bench of the Tribunal. D.N. Mishra then made an application to implead the appellant-Chairman of the Tribunal as a party in that proceeding and made allegation of personal malice against him because of the letter dated 10.4.1992, he had written to the Chief Secretary for relieving D.N. Mishra of the responsibility of functioning as the Additional Registrar of the Tribunal. The State Government's application came before the appellant as Chairman of the Tribunal because of the vacation of the Tribunal. The appellant then transferred the matter to I. Roy, Member (Judicial) by order dated 29.5.1992 with a note refuting the allegation of malice made by D.N. Mishra and stating that his request to the Chief

Secretary to change Mishra from the post of Additional Registrar was occasioned by the fact that his improper functioning resulted in inconvenience to the lawyers of Cuttack who had a legitimate grievance against the improper functioning of the Registry at the Cuttack Bench. The appellant stated in the note that as Chairman of the Tribunal, it was his duty to see that the Circuit Bench at Cuttack functions properly and, therefore, he had to adopt such a course. The Member (Judicial) then directed the matter to be placed before the Chairman for listing it before a Division Bench of which he did not wish to be a member. The appellant as Chairman then made an order on 29.6.1992 constituting a Division Bench of the Vice-chairman and Member (Admn.) to hear the matter. This is how the matter came to be heard by the Vice-Chairman S.K. Mishra and Member (Administrative) U.N. Mallik who have made the order dated 26.8.1993 in which strong critical comments and adverse remarks have been made against the appellant as Chairman of the Tribunal while quashing the transfer order of D.N. Mishra.

We are informed that D.N. Mishra has thereafter been transferred by the Government and he is no longer functioning as the Additional Registrar of the Cuttack Bench of the Tribunal. The quashing of the transfer order is not challenged in this appeal. The only question is of the legality and propriety of the critical comments and adverse remarks made against the appellant in the impugned order dated 26.8.1993.

The background in which the transfer order dated 11.5.1992 was issued by the Government posting D.N. Mishra as Additional District Magistrate, Koraput resulting in his ceasing to function as Additional Registrar of the Cuttack Bench of the Tribunal is sufficient to indicate that the transfer of D.N. Mishra was made in public interest and it was to ensure proper functioning of the Cuttack Bench of the Tribunal. The attitude of D.N. Mishra as Additional Registrar of the Cuttack Bench had led to legitimate grievance in the Bar requiring the Chairman of the Tribunal to take prompt steps for proper functioning of the Registry at the Cuttack Bench of which D.N. Mishra was in charge. The resentment of the Bar escalated to a contempt proceeding before the High Court alleging violation of the court's order for establishment of the Cuttack Bench and ensuring its proper functioning. Even the Chairman of the Tribunal was impleaded therein as a respondent and he escaped therein because of the High Court's conclusion that the Chairman had properly discharged his responsibilities to ensure proper functioning of the Cuttack Bench and for that purpose he had also written to the Chief Secretary on 10.4.1992 to shift D.N. Mishra who was making the functioning of the Registry difficult. In fact, notice of the contempt petition against the appellant was discharged only because of this favourable conclusion reached by the High Court in respect of the appellant. This alone is sufficient to indicate total lack of justification for any adverse command against the appellant.

It is settled that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by malafides or infraction of any professed norm or principle governing the transfer [See N.K. Singh vs. Union of India and Others, 1994 (6) SCC 98]. The transfer of D.N. Mishra in this background being clearly in public interest, there was no permissible ground available to the Tribunal for quashing it. We are constrained to observe that the Division Bench of the Tribunal which made the impugned order dated 26.8.1993 quashing the transfer of D.N. Mishra on the ground of malice of the appellant as the Chairman of the Tribunal did

so against the material on record and the facts beyond controversy which borders on judicial impropriety. It may also be noted that such comments were made against the Chairman without even a notice to him and as state in the order itself after treating the application for impleading the Chairman to be deemed rejected.

We are distressed at the tenor of the impugned order which lacks judicial propriety and sobriety at many places. We may quote some portions of that order which compel us to make this observation. Some of the extracts from the order of U.N. Mallik, Member (Administrative) are as under :

"..... The Chairman of the Tribunal who had practically nothing to do in the matter with regard to providing infrastructure for smooth functioning of the Bench, had no reason to join hands with Chief Secretary and though there was no notice to the Chairman by the Hon'ble High Court in the contempt matter, he volunteered himself to be dragged into the litigation and through a common lawyer both Respondent-2 and the Chairman of the Tribunal filed their affidavits stating to have provided already all facilities to the Registry at Cuttack The Hon'ble High Court did not believe the plea taken by both Respondent-2 and the Chairman of the Tribunal and strongly commented upon it to be an 'eye wash' and 'travesty of truth' We are in absolute agreement with judgment of the Orissa High Court in this regard."

'Now we come to the litigation stage in the present case. Even during pendency of this litigation a judicial restraint which was expected from any judicial officer as was given a complete go-by.

Whether the petitioner had any case or not. Whether he would have succeeded or failed in the litigation is a complete different position altogether. The amount of haste, anxiety and interest shown by the Chairman of the Tribunal to hear and dispose of this case in a vacation Bench without the case being listed speaks volumes by itself. We are not able to appreciate the initial action before the transfer order was issued in respect of the applicant and the subsequent action during pendency of the litigation by a responsible person discharging judicial function like the Chairman of the Tribunal.

Judged the conduct of the Chairman in the light of the observations of the Apex Court. I find that he had completely transferred the minimum judicial norm and constraints required. In the premises, for the discussions made in the foregoing paragraphs we have absolutely no hesitation to hold that the impugned order of transfer is arbitrary and actuated by mala fids of Respondent-2 for which the order has become unsustainable and untenable in law. Accordingly, we quash the order of transfer relating to the applicant,"

Thereafter, in a separate order, the Vice Chairman S.K. Mishra expressed his agreement with the conclusion of the Member (Administrative) and after observing that the application for impleading the Chairman was deemed to be rejected, proceeded to say as under :

"In the Judgment of the Hon'ble Member (Administrative) though mention has been made in regard to the application filed by the applicant for impleading the Chairman

of this Tribunal as a party- respondent, it must be assumed to have been rejected since without the Chairman being made a party the case has been disposed of. I think I should mention here that rightly the prayer of the applicant in that regard has not been allowed, since the Chairman in View of what is stated above does not appear to be a necessary or proper party,

This proceeding which I would term to be an unfortunate one so far as the dignity of the Tribunal is concerned gave occasion for discussion on the conduct of the Chairman. The Chairman on account of his own indiscretion landed himself in the present situation. Had he been discreet, he would not have landed would not become relevant for discussion for arriving at the conclusion in regard to mala fide alleged against the Chief Secretary. The sequence of events which are relied upon by the applicant to substantiate the allegation of mala fide made against the Chief Secretary which brought about the impugned the Chairman of the tribunal came to the picture. I am also baffled as to what for the Chairman of this Tribunal against whom no notice of contempt had been issued chose to appear before the High Court alongwith the Chief Secretary through common lawyer. It is suggested that he did so only to bail out the Chief Secretary from a difficult situation. This suggestion appears to be quite reasonable and acceptable. Unfortunately, for the Chairman of this Tribunal and the Chief Secretary of the State Government, adverse comments were made by the High Court and it was said that the aforesaid plea advanced before the wash. Applicant's assertions in this regard appear to be reasonable and true. Events, prior and subsequent, to issuance of the impugned order of transfer in respect of the applicant bear out such an inference.

I express my extreme unhappiness to be in a situation like this and associate myself with the observations made in regard to the actions of the Chairman of this Tribunal which became necessary while dealing with the allegation of mala fide advanced against the Chief Secretary, which again became necessary for disposal of the present proceeding."

A bare perusal of the High Court's order dated 8.5.1992 referred earlier, the letter dated 10.4.1992 of the appellant to the Chief Secretary and the proceedings of the case before the Tribunal containing the note dated 29.5.1992 of the Chairman transferring the matter to be heard by some one else in the Tribunal and later the order constituting the Division Bench comprising of S.K. Mishra, Vice-Chairman and U.N. Mallik, Member (Administrative) to hear the matter finally leaves no doubt that in making the above observations against the appellant, the Division Bench of the Tribunal has completely misread the unambiguous language of these documents to make the wholly unwarranted adverse remarks against the appellant without even notice to him. Appearance of the appellant before the High Court in the contempt petition was on account of he being responsible for the proper functioning of the Registry which is under the control of the Chairman of the Tribunal since the functioning of the Registry at the Cuttack Bench of which D.N. Mishra was incharge was the subject matter of that contempt petition. The Division Bench appears to have been totally oblivious to the responsibility of the Chairman of the Tribunal in this behalf. Just as the responsibility for the

proper functioning of the Registry and control over it in the High Court is of the Chief Justice alone by virtue of Article 229 and that in the Supreme Court of the Chief Justice of India So virtue of Article 146, so also it is the Chairman of an Administrative Tribunal who has the responsibility for proper functioning of the Registry and he alone exercises direct control over it In such a situation, the appellant as Chairman of the Tribunal had a duty to explain to the High Court the actual position with regard to the functioning of the Registry at the Cuttack Bench to enable the High Court to decide properly the contempt petition moved by the members of the Bar This has been unfairly described by the Division Bench of the Tribunal as undue zeal of the chairman what we have said is sufficient to indicate the illegality and impropriety of the observations made by the Division Bench of the Tribunal against the appellant as Chairman of the Tribunal This is sufficient to indicate that it is the duty of this Court to exchange these unwarranted remarks made unfairly against the appellant We are informed that the appellant as well as the Vice-Chairman and Member (Administrative) who constituted the Division Bench of the Tribunal have all by now retired. It is, therefore, not necessary to discuss these remarks any further.

Before parting with this case, We consider it necessary to refer to the observations in some earlier decisions of this Court in similar context indicating the need for sobriety and restraining in making adverse and critical comments. In *Niranjan Patnaik vs. Sashibhusan Kar & Anr.*, 1986 (2) SCR 47. in a similar context, after referring to earlier authorities, it was stated as under:

"It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct We hold that the adverse remarks made against the appellant were neither justified nor called for."

(at page 483) In *State of Madhya Pradesh & Ors. vs. Nandlal Jaiswal & Ors.*, 1987 (1) SCR 1, one of the questions raised was the propriety of certain observations and some disparaging remarks made by a learned Judge of the High Court in his separate concurring opinion in a matter decided by a Division Bench While holding that those disparaging remarks were unwarranted, this Court expressed its strong disapproval of the same as follows:

"Before we part with this we must express our strong disapproval of the observations made by B.M. Lal, J. in paragraphs 1, 9, 17, 18, 19 and 34 of his concurring opinion The learned Judge made sweeping observations attributing mala fides, corruption and under-hand dealing to the State Government. These observations are in our opinion not at all justified by the record."

(at page 62) " What the learned Judge has said is based entirely on conjecture and suspicion judicial disposition of a case.

(at page 63) "We may observe in conclusion that Judges should not use strong and carping language while criticizing the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint They must have the humility to recognize that they are not infallible and any harsh and

disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made."

(at page 66) Again this Court in A.M. Mathur vs. Pramod Kumar Gupta, 1990 (2) SCR 1100, reiterated this position while expunging the diappearing remarks made against an advocate who was also the former Advocate General of the State while dismissing a review petition. These disparaging remarks were also contained only in the separate concurring order of one of the learned Judges of the division Bench. Incidentally, this matter was the aftermath of Nandlal Jaiswal (supra) which made it worse While expunging the disparaging remarks made by the learned Judge in a separate concurring order, this Court stated as under :

"It may be noted that C.P. Sen, J dismissed the review petition on the ground of maintainability, limitation and locus standing of the petitioner. Thereafter the application was filed to pass strictures against the appellant in the light of Vidhan Sabha proceedings. B.M. Lal, J. seems to have acceded to that request. No doubt each Judge is independent to form an opinion of his own in deciding ses or in any phase of the decisional function, But the facts of the present case against the background of the views expressed by this Court apropos to the earlier strictures against the Government clear he was in his mind, not to criticise the appellant The evidence of even the appearances of bitterns. so important in a judge required him not to cast aspersing on the professional conduct of the appellant."

(at page 116) "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary Judicial restraint in this regard might better be called judicial respect: that is, respect by the judiciary. Respect to those who come before the Court as well to other co-ordinate branches of the state. the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these qualities, it will neither good for the judge nor for the judicial process.

The Judges Branch is a seat of power Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallenged control of the Court domain, But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. (See (i) R.K. Lakshmanan v. A.K. Srinivasan, [1976] 1 SCR 204 and (ii) Niranjan Patnaik v.

Sashibhushan Kar, [1986] 2 SCC 567 at

576)."

(at page 117) "We therefore, allow the appeal and expunge all the remarks made by B.M. Lal, J. against the appellant in the impugned order."

(at page 118) What we have said above is nothing new and is only a reiteration of the established norms of judicial propriety and restraint expected from everyone discharging judicial functions. Use of intemperate language or making disparaging remarks against any one unless that be the requirement for deciding the case, is inconsistent with judicial behaviour. written words in judicial orders form permanent record which make it even more necessary to practise self-restraint in exercise of judicial power while making written orders. It is helpful to recall this facet to remind ourselves and avoid pitfalls arising even from provocation at times. The Division Bench of the Tribunal overlooked this aspect and misread the documents in the record including the High Court's judgment to make disparaging remarks against the appellant as Chairman of the Tribunal based on a non- existing foundation. All the disparaging remarks in the impugned order against the appellant are, therefore, expunged. This being the limited scope of this appeal, nothing else needs consideration. The appeal is allowed, accordingly.