Supreme Court of India
High Court Of Judicature At ... vs Raj Kishore Yadav And Ors on 24 February, 1997
Bench: A.M. Ahmadi, Cj, S.B, Majmudar, Sujata V. Manohar

CASE NO.:
Appeal (civil) 1562 of 1997

PETITIONER:
HIGH COURT OF JUDICATURE AT ALLAHABAD THROUGH ITS REGISTRAR

RESPONDENT:
RAJ KISHORE YADAV AND ORS.

DATE OF JUDGMENT: 24/02/1997

BENCH:
A.M. AHMADI, CJ & S.B, MAJMUDAR & SUJATA V. MANOHAR

JUDGMENT:

JUDGMENT 1997 (2) SCR 429 The Judgment of the Court was delivered by S.B. MAJMUDAR, J.

Leave granted.

This appeal arises out of a Special Leave Petition moved by the High Court of Judicature at Allahabad through its Registrar having obtained, permission from this Court to file the same against the judgment and order dated 6th November 1996 rendered by a Division Bench of the High Court of Allahabad. By the impugned order Rule 4(a) of Chapter XXXV-E of the High Court Rules, 1951 was declared to be ultra vires Article 215 of the Constitution of India in so far as the said Rule permits hearing of a petition alleging civil contempt in connection with breach or violation of an order, direction or judgment of a Bench of the High Court by a learned Judge to whom such work is assigned by the Chief Justice and who is other than the judge or judges who have passed the concerned order, direction or judgment. The learned judges by their impugned order have taken the view that as the High Court is a court of record as provided by Article 215 of the Constitution of India once a Bench of the High Court has passed an order or direction breach of which is complained of by the aggrieved party, the same Bench which has the record of the case must hear the Contempt Petition and in so far as the impugned Rule permits hearing of such Contempt Petition by any other judge of the High Court, it flies in the face of Article 215 of the Constitution of India and, therefore, would be to that extent null and void and inoperative in law. Rule 4(a) of the High Court Rules provides as under :

"4(a), Every case relating to civil contempt shall be presented before the bench of a Single Judge constituted for that purpose,"

At the outset it may be stated that it is indeed surprising how the Division Bench considered the merits of the question without notice to the High Court on its administrative side through its Registrar for giving it an opportunity to defend this Rule as it was the author thereof. On this short ground it must be held that the impugned order is liable to be set aside as being violative of basic

principles of the natural justice. But instead of resting our judgment on this short ground, we have thought it fit to decide the question of validity of the said Rule on merits as the question raises an important controversy regarding the correct procedure to be followed by the High Court while deciding applications invoking contempt jurisdiction of the High Court in connection with civil contempts of its orders and as the decision on this question will have a direct impact oh large number of petitions pending in the High Court.

Learned counsel appearing for the appellant-High Court as well as learned counsel appearing for some of the respondents have contended that the aforesaid view of he the High Court is patently erroneous. Respondent No. 1 who was the original applicant before the High Court invoking its contempt jurisdiction, though served, has not though it fit to appear and contest these proceedings.

A few relevant facts leading to these proceedings may be noted at the outset. On 16th December 1989 an interim order was passed by a Division Bench of the High Court of Allahabad in Writ Petition No. 23189 of 1989 staying termination of services of ad hoc teachers who were petitioners before the High Court. By an order dated 13th May 1993 a learned Single Judge of the High Court, R.S, Dhavan, J., allowed the said Writ Petition and issued directions to the respondent-authorities con-cerned by which it was ordered that ad hoc teachers at the Kendriya Vidyalaya would be replaced only by freshly empanelled recruits and should not be replaced by transferred teachers and that they would be entitled to salary for the period mentioned in the aforesaid order. On 18th October 1993 respondent No. 1 moved an application for taking suitable action against the concerned respondents in the Writ Petition on the allegation that they committed contempt of the court by flouting the aforesaid final order passed by the learned Judge in the Writ petition. The original writ petitioners by an application dated 9th November 1993 sub-mitted that nomination of a learned judge for hearing civil contempt of the High Court as per impugned Rule 4(a) of the High Court Rules militates against Article 215 of the Constitution of India. By the judgment under appeal the Division Bench of the High Court declared Rule 4(a) of the High Court Rules as ultra vires Article 215 of the Constitution to the extent indicated in the judgment, as noted earlier.

Having given our anxious consideration to the reasoning which prevailed with the learned judges for coming to the aforesaid conclusion, and having heard the learned counsel for the parties before us we find that the view taken by the learned judges of the High Court in the impugned judgment cannot be sustained on the scheme of the Constitution and the relevant provisions of the Contempt' of Courts Act, 1971 (hereinafter referred to as 'the Act'), In the first place we may notice the relevant provisions of the Act. Section 2(b) defines 'civil contempt' as under :

"2. (b). "civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court."

Section 11 provides that a High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits. Section 23 lays down that the Supreme Court or, as the case may be, any High Court may make rules, not inconsistent with the provisions of this Act,

providing for any matter relating to its procedure.

As per the aforesaid provisions of the Act the High Court can take suitable action in connection with civil contempt committed by the contem-nor so far as the contempt is alleged to be in connection with any order passed by the High Court in exercise of its jurisdiction. The contempt alleged is the contempt of the High Court as such and not necessarily the contempt of only a particular judge who might have passed tie order concerned in exercise of the jurisdiction conferred on the High Court as such. 'High Court' is defined by Section 2(d) of the Act to mean, 'the High Court for a State or union territory, and includes the court of the Judicial Commissioner in any Union territory'. The procedure for exercise of contempt jurisdiction Can be laid down by the High Court concerned by framing suitable Rules under Section 23 of the Act.

Now let us have a look at the constitutional scheme in this connection. The first relevant Article is Article 214 in Chapter V of Part VI of the Constitution of India dealing with 'High Courts for States'. It states that there shall be a High Court for each State. Then follows Article 215 which has been heavily relied upon in the impugned judgment by the learned judges of the High Court for voiding the Rule in question. Said Article reads as under :

"275. High Courts to be courts of record.- Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

Article 216 deals with 'Constitution of High Court's and lays down that, 'every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint'. There- fore, the High Court as a court of record would consist of a Chief Justice and other judges who are appointed to the said court by the President from time to time. Article 225 deals with 'Jurisdiction of existing High Courts' meaning thereby which were in existence at the time when the Constitution of India came into force. High Court of Allahabad is one such High Court. Therefore, its jurisdiction gets validty traced to Article 225. Said Article provides as under :

"225. Jurisdiction of existing High Courts.- Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of Justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

Prior to the advent of the Constitution the then existing High Courts were having jurisdiction emanating from Section 223 of the Government of India Act, 1935 which read as under :

"223. Subject to the provisions of this Part of this Act, to the provisions of any order in Council made under this or any other Act. to the provisions of any order made under the Indian Independence Act, 1947, and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof silting alone or in division courts, shall be the same as immediately before the establishment of the Dominion.

(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or law for the time being in force."

As Section 223 of the Government of India Act, 1935 in its turn referred to the powers of the High Courts as were being exercised by then immediately before the establishment of the dominion under the said Act of 1935, reference to yet earlier Government of India Act of 1915 espe-cially Section 108 thereof becomes relevant. Section 108 of the Govern-ment of India Act, 1915 which regulated the administration of justice by the concerned High Courts prior to the establishment of dominion read as under :

"108. (1). Each high court may by its own rules provide, as it thinks fit, for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts."

Thus a Conjoint reading of Section 108 of the Government of India Act, 1915, Section 223 of the Government of India Act, 1935 and Article 225 of the Constitution of India makes it clear that every High Court by its own rules can provides for exercise of its jurisdiction, original or appellate, by one or more judges or by Division Courts consisting of two or more judges of the High Courts and it is for the Chief Justice of each High Court to determine what judge in each case is to sit alone or what judges of the court whether with or without the Chief Justice are to constitute several division courts. In exercise of the aforesaid rule-making power which inhered in all existing High Courts at the time of the advent of the Constitution of India and which was expressly saved by Article 225 of the Constitution of India, the Full Court of the High Court had framed these Rules in 1952. The impugned Rule is one of those Rules. Pursuant to the said Rule the learned Chief Justice was entitled to nominate a learned Single Judge to decide civil contempt cases arising under the Contempt of Courts Act, 1971. The aforesaid Rule, therefore, clearly falls in line with the

constitutional scheme in connection with the exercise of jurisdiction of the High Court as seen earlier. Consequently it cannot be said that by enacting the impugned Rule the High Court on its administrative side had encroached upon any forbidden field. The scheme of the aforesaid provision was examined by this Court in the case of National Sewing Thread Co. Ltd. Chidambaram v. James Chadwick and Bros. Ltd., AIR (1953) SC 357. In that case a Bench of three learned judges speaking through Mahajan, J,, had to consider the question whether an order by a learned Single Judge of the High Court under Trade Marks Act, 1940 could be appealed against under Clause 15 of the Letters Patent of the Bombay High Court. It was submitted amongst others that such an appeal would not lie as Clause 15 of the Letters Patent applicable to Bombay High Court permitted appeal from the order of a learned Single Judge delivered pursuant to Section 108, Government of India Act, 1915 which no longer survived after the advent of the Constitution of India. Repelling the said contention the following pertinent observations were made in pare 9 of the Report:

"It was argued that simultaneously with the repeal of S. 108, Government of India Act 1915 and of the enactment of its provisions in S. 223, Government of India Act of 1935 and later on in Art. 225 of the Constitution of India, there had not been any corresponding amendment of Cl. 15 of the Letters Patent and the reference to S. 108 in Cl. 15 of the Letters Patent could not therefore be taken as relating to these provisions, and that being so, the High Court had no power to make rules in 1940 when the Trade Marks Act was enacted under the repealed section and the decision of Mr. Justice Shah therefore could not be said to have been given pursuant to S.108. This objection also in our opinion is not well founded as it overlooks the fact that the power that was conferred on the High Court by S.108 still subsists, and it has not been affected in any manner whatever either by the Government of India Act 1935 or by the new Constitution. On the other hand it has been kept alive and reaffirmed with great vigour by these statutes. The High Courts still enjoy the same unfettered power as they enjoyed under S.108 of the Government of India Act, 1915 of making rules and providing whether an appeal has to be heard by one Judge or more Judges or by Division Courts consisting of two or more Judges of the High Court."

Thus enactment of the impugned Rule squarely falls within the administrative power of the High Court well preserved by the aforesaid provisions.

However the learned judges were persuaded to declare the impugned Rule as ultra vires on the ground that it conflicted with Article 215 of the Constitution of India, It is difficult to appreciate the said line of reasoning which appealed to the learned judges. All that Article 215 states is that every High Court shall be a court of record meaning thereby all the original record of the court will be preserved by the said court and it shall have all the powers of such a superior court of record including the power to punish for contempt of itself. It has to be kept in view that as a superior court of record the high Court is entitled to preserve its original record in perpetuity. It is also now well settled that even apart from the aforesaid attribute of a superior court of record the High Court as such has two-fold powers. Being a court of record the High Court (i) has power to determine the question about its own jurisdiction; and (ii) has inherent power to punish for its contempt summarily. The aforesaid twin incidents of a court of record are well established by a catena of decisions of this Court. We may usefully refer to one of them. A majority of the Constitution Bench of nine learned Judges of this Court in the case of Naresh Shridhar Mirajkar and Others v. State of

Maharashtra and Another, AIR (1967) SC 1 speaking through Gajendragadkar, CJ., has made the following pertinent observa-tions in para 60 of the Report :

"There is yet another aspect of this matter to which it is necessary to refer, The High Court is a superior Court of Record and under Art. 215 shall all powers of such a Court of record including the power to punish contempt of itself. One distinguish-ing characteristic such superior Courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. 1 of 1964, 1965-1 SCR 413 at p. 499. In that case, it was urged before this Court that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such the order was a nullity. Rejecting this argument this Court observed that in the case of a superior Court of Record, it is for the Court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsburys Laws of England where it is observed that 'prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court.' If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court."

In the light of the aforesaid parameters of the powers of the High Courts as a superior court of record it is difficult to appreciate how the Full Court of the Allahabad High Court by framing the impugned Rule had enacted a provision which fell foul on the touchstone of Article 215 of the Constitution. High Court as an institution has the seisin of the relevant record pertaining to all the cases tried before it. Record cannot be said to be in the custody of the author of the order giving rise to contempt proceedings. The cases may be pending or might have been disposed of. Civil contempt might be alleged in connection with interim orders in pending matters and can also be alleged in connection with final orders in matters which are already disposed of. The record of such matters would be available id the High Court. All that the impugned Rule has done is to entitle the Chief Justice to assign the work of hearing civil contempt matters to one of the judges. Such an exercise, an seen above, is perfectly legal and valid in the light of the constitutional scheme. The civil contempt alleged is the contempt of the High Court as such and not the contempt of the author of the order being the judge concerned who might have passed the said order, whether interim or final. When civil contempt by way of breach of such an order is alleged it is the institution of the High Court as such which is said to have been contemptuously dealt with by the concerned cqntemnor. For upholding the majesty of the institution as such, therefore, the High Court as a court of record can look into the grievance centering round the alleged breach of its order and it is this power to punish the contemoor that flows from Article 215 of the Constitution of India as well as from the relevant provisions of the Act. But how this grievance of the aggrieved party is to be processed and examined pertains to the realm of distribution of work and jurisdiction of the High Court amongst

different Division Benches and that exercise is permissible to the Chief Justice of the High Court as per the rules framed by the High Court on its administrative side. That exercise has nothing to do with Article 215. Article 215 saves the inherent powers of the High Court as a court of record to suitably punish the contemnor who is alleged to have committed civil contempt of its order; Order might have been passed by any of the learned judges exercising the jurisdiction Of the High Court as per the work assigned to them under the Rules by the orders of the Chief justice, but once such an order is passed by a learned Single Judge or a Division Bench of two or more judges the order becomes the order of the Sigh Court. Breach of such an order which gives rise to contempt proceedings also pertains to the contempt of the High Court as an institution. At that stage Article 215 does not operate, but it is only Article 225 read with the Rules framed by the High Court on administrative side and the power inhering in the Chief Justice, of assigning work to the appropriate Bench of judge or judges, under Section 108 of the Government of India Act, 1915 read with Section 223 of the Government of India Act, 1935 which would have its full play. Consequently if under the impugned Rule the task of consider-ing the grievances of the aggrieved party in connection with civil contempts of High Court's orders is assigned to one of the judges of the High Court it cannot be said that thereby the impugned Rule has in any manner affected the status of the High Court as a court of record. It has to be kept in view that when civil contempt is alleged in connection with breach of any order of the High Court, whether final or interim, while deciding the said question the learned judge to whom this work is assigned is entitled to look into the relevant record which obviously is available in the High Court and thereby the learned judge is not depriving any other judge of the said record. So far as matters which are finally disposed of are concerned, such an eventuality can never arise but even in pending matters where breach of interim orders is alleged, when contempt proceedings in connection with such orders are placed for examination and scrutiny before the learned Judge to whom the work is assigned by the Chief Justice under the Rules, it is difficult to appreciate how it can be said that the record of the case in any way gets adversely affected or disturbed. It is the question of internal arrangement and transmission of record from court to court as per the exigencies and necessities of the case. Under these circumstances it is impossible to hold that the impugned Rule is in any way ultra vires Article 215 of the Constitution of India.

It is also difficult to appreciate how the learned judges of the High Court in the impugned judgment could assume that record contemplated by Article 215 of the Constitution of India is the record available only to the concerned judges dealing with the matter in which the order, non-com- pliance of which is alleged, was passed.

Let us now see whether the working of the impugned Rule Can affect the jurisdiction of the High Court as superior court of record and whether it can ever conflict in its operation with Article 215 of the Constitution of India, Complaint about civil contempt in connection with non-compliance of order of High Court can give rise to the following situations :

(i) Violation of interim order of the High Court passed in matters which are pending for final disposal.

In such a case if the Bench which passed the Order is not hearing the case, the record of the case would be lying in the court office, It can conveniently be called for by the learned judge who is

assigned the work of hearing civil contempt cases. In such an eventuality no question of the record of the case being in any way withdrawn from the scrutiny of the Bench which passed the order would ever arise.

(ii) Violation of interim order of the High Court in a pending matter which is actually part heard before a Bench of the High Court.

In such a case by a process of mutual adjustment record of the case, if necessary, can be called for by the Bench of the court hearing contempt matters. That can be done with the permission of the Bench before whom the main matter is being heard as a part heard matter.

In such a case the hearing of the part heard matter may be suitably adjourned if it is felt that the contempt matter should be heard earlier. If for any reason such record is not made available to the court dealing with contempt matter and it becomes necessary to scrutinize the same before deciding the contempt petition, then the contempt matter would have to be suitably adjourned awaiting arrival of the record from the court of the leaned judge or judges that might be hearing the main case.

(iii) If contempt alleged is of any final order of the High Court in a disposed of matter, the record of the case can be conveniently called for from the record room without disturbing working of any other court.

In none of the aforesaid eventualities it can ever be suggested that hearing of civil contempt case by a Bench of the High Court other than the one which had passed the order, non-compliance of which is in issue, would at all affect the jurisdiction of the High Court at a superior court of record. Hence there would arise no occasion for the supposed conflict between the working of the impugned Rule and Article 215 of the Constitution.

Reliance placed on Order XXXIX Rule 2A of Code of Civil Proce-dure, 1908 ('CPC' for short) by the learned judges in the impugned judgment is also uncalled for. The said Rule on its express language enables the presiding judge of the Court that passed injunction order to entertain complaint regarding breach of his order. In such a case the presiding judge of the court or his success or-in-office is enabled to enter-tain such a complaint. The aforesaid Rule is mainly pressed in service before subordinate courts which at most of the centers consist of sole presiding judges of the courts. In such cases where the subordinate courts working at these centers consists of only one presiding judge the applica-tions under Order XXXIX Rule 2A, CPC will have to be filed in the very same court and would go to the same judge or his successor-in-office. Such is not the case with the High Court functioning as a superior court of record under Article 215 of the Constitution of India. As noted earlier the High Court consists of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint as laid down by Article 216 of the Constitution of India. Consequently plurality of judges appointed to the High Court collectively constitute the High Court. Hence analogy of Order XXXIX Rule 2A, CPC cannot be pressed in service while judging the validity of the impugned Rule on the touchstone of Article 215 of the Constitution of India.

It is of course true that the learned judges in the impugned judgment have referred to the observations earlier made by the then Chief Justice of the High Court Hon'ble B.P. Jeevan Reddy, J., about the practical difficul-ties which might arise in the working of the said Rule and to the constitu-tion of committee of two learned judges to suggest amendments of the Rules. But these events have nothing to do with the moot question whether the Rule as framed flies in the face of Article 215 of the Constitution of India or not. It may be that the Rule may require suitable modification from the administrative point of view but that has to be left to the Full Court of the High Court on its administrative side, In fact a committee of two learned judges was appointed for that very purpose, but could not finalise its report for reason beyond its control. Be that as it may, which rule would be better suited for administration of justice in the High Court is a matter which could have been legitimately examined by the Full Court of the High Court on its administrative side by appointing suitable com-mittee of learned judges for recommending appropriate modifications in the Rules. Such an administrative function which could be legitimately performed by the Full Court of the High Court could not be taken over by the High Court on its judicial side as it would still remain in the domain of a policy decision to be taken by the High Court on its administrative side. The learned judges in the impugned judgment appear to have felt that question of civil contempt could be better examined by the same learned judges who might have passed the order breach of which is alleged by the aggrieved party and Rules of some of the High Courts like the High Court of Andhra Pradesh might have appeared to the learned judges to be more suitable, but still the said consideration would remain in the domain of administrative policy decision of the High Court.

It is also to be kept in view that while exercising original jurisdiction under Contempt of Courts Act, 1971 in connection with civil contempt of its own orders the High Court is not exercising any review jurisdiction wherein statutorily the proceedings may have to be placed for decision of the same judge or judges if they are available. Contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India.

How such original jurisdiction can be exercised is a matter which can legitimately be governed by relevant Rules framed by the High Court on its administrative side by exercising its rule-making power under Section 23 of the Act or under its general rule-making power flowing from the relevant provisions of the constitutional scheme as seen earlier. Conse-quently is cannot be said that the impugned Rule is violative of Article 215 of the Constitution of India as held by the Judgment under appeal.

In the result the appeal is allowed. The impugned judgment and order of the High Court, dated 6th November 1996 are quashed and set aside. Clause (a) of Rule 4 of Chapter XXXV-E of the Rules of the High Court of Judicature at Allahabad is held to be valid and legal and not inconsistent with Article 215 of the Constitution of India. In the facts and circumstances of the case there shall be no order as to costs.