Supreme Court of India
Om Prakash Chautala vs Kanwar Bhan & Ors on 31 January, 1947
Author: D Misra
Bench: Anil R. Dave, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1785 OF 2014
(Arising out of S.L.P. (C) No. 14409 of 2010)

Om Prakash Chautala … Appellant

Versus

Kanwar Bhan and others …Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

1. Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on the posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the down trodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. The memory of nobility no one would like to lose; none would conceive of it being atrophied. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity. When a court deals with a matter that has something likely to affect a person's reputation, the normative principles of law are to be cautiously and carefully adhered to. The

advertence has to be sans emotion and sans populist perception, and absolutely in accord with the doctrine of audi alteram partem before anything adverse is said.

2. We have commenced with aforesaid prefatory note because the centripodal question that has eminently emanated for consideration in this appeal, by special leave, is whether the judgment and order passed by the learned single Judge of the High Court of Punjab and Haryana at Chandigarh in CWP No. 12384 of 2008 commenting on the conduct of the appellant and further directing recovery of interest component awarded to the employee, the first respondent herein, from the present appellant and also to realize the cost and seek compensation in appropriate legal forum, including civil court, though the appellant was not arrayed as a party to the writ petition, and denial of expunction of the aforesaid observations and directions by the Division Bench in L.P.A. No. 1456 of 2009 on the foundation that the same are based on the material available on record and, in any case, grant of liberty to claim compensation or interest could not be held to be a stricture causing prejudice to the appellant who would have full opportunity of defending himself in any proceeding which may be brought by the respondent for damages or recovery of interest, is legally defensible or bound to founder on the ground that the appellant was not impleaded as a respondent to the proceeding. Be it noted, the Division Bench has also opined that the observations made by the learned single Judge are not conclusive and no prejudice has been caused to the appellant, the then Chief Minister of the State of Haryana.

3. Filtering the unnecessary details, the facts which are to be exposited are that the first respondent was working as Assistant Registrar of Cooperative Societies in the State of Haryana. On 4.2.2001 during a state function “Sarkar Apke Dwar” at Jagadhari constituency the appellant received a complaint from some person in the public, including the elected representative, about the working of the respondent No.1. The appellant after considering the verbal complaint announced the suspension of the first respondent during the press conference on the same day. On 06.02.2001 the first respondent was placed under suspension by the letter of the Financial Commissioner & Secretary to Govt. of Haryana, Cooperation Department, Chandigarh which was followed by charge sheet dated 27.03.2002. The first respondent filed CWP No. 16025 of 2001 against the suspension order which was disposed of on 20.03.2002 with direction to the Government. On 28.03.2002 the 1st respondent was reinstated pending inquiry. After issuance of charge sheet and revocation of the suspension order, the first respondent submitted his reply on 5.6.2002.

4. As the facts would undrape, nothing happened thereafter and he stood superannuated on 31.01.2005 and was granted provisional pension, provident fund and amount of Group Insurance Claim but pension as due and other retiral benefits like gratuity, leave encashment, commutation of other leaves, etc. were withheld due to pendency of disciplinary proceedings. On 6.2.2007 the first respondent filed CWP No. 2243 of 2007 which was disposed of by the High Court directing the government to complete the enquiry within a period of six months from the date of receipt of copy of the order. As the enquiry was not concluded within the stipulated time, the employee preferred CWP No. 12384 of 2008. The learned single Judge vide judgment and order dated 20.10.2009 allowed the writ petition and set aside the charge-sheet and the punishment with further directions to release all the pension and pensionary benefits due to the first respondent within a period of one month with interest @ 10 % p.a. from the due date to the date of payment. In course of judgment the learned

single Judge made certain observations against the appellant herein.

5. Grieved by the observations and inclusive directions made in the judgment the appellant preferred LPA No. 1456 of 2009. The contentions raised by the appellant in the intra-court appeal that the adverse remarks were not at all necessary to adjudicate upon the issue involved in the matter, and further when he was not impleaded as a party to the writ petition recording of such observations was totally impermissible, as it fundamentally violated the principles of natural justice, were not accepted by the Division Bench as a consequence of which the appeal did not meet with success.

6. We have heard Mr. P.P. Rao, learned senior counsel for the appellant and Mr. Hitesh Malik, Additional Advocate General appearing for the State. Despite service of notice there is no appearance on behalf of the private respondent, that is, respondent No. 1.

7. As has been indicated earlier, the appellant was not a party to the proceeding. It is manifest that the learned single Judge has made certain disparaging remarks against the appellant and, in fact, he has been also visited with certain adverse consequences. Submission of Mr. P.P. Rao, learned senior counsel, is that the observations and the directions are wholly unsustainable when the appellant was not impleaded as a party to the proceeding and further they are totally unwarranted for the adjudication of the controversy that travelled to the Court.

8. In State of Bihar and another v. P.P. Sharma, IAS and another[1], this Court has laid down that the person against whom mala fides or bias is imputed should be impleaded as a party respondent to the proceeding and be given an opportunity to meet the allegations. In his absence no enquiry into the allegations should be made, for such an enquiry would tantamount to violative of the principles of natural justice as it amounts to condemning a person without affording an opportunity of hearing.

9. In Testa Setalvad and another v. State of Gujarat and others[2] the High Court had made certain caustic observations casting serious aspersions on the appellants therein, though they were not parties before the High Court. Verifying the record that the appellants therein were not parties before the High Court, this Court observed: -

“It is beyond comprehension as to how the learned Judges in the High Court could afford to overlook such a basic and vitally essential tenet of the “rule of law”, that no one should be condemned unheard, and risk themselves to be criticized for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics.” And again: -

> “Time and again this Court has deprecated the practice of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons.”

10. In State of W.B. and others v. Babu Chakraborthy [3] the principle was reiterated by stating that the High Court was not justified and correct in passing observations and strictures against the appellants 2 and 3 therein without affording an opportunity of being heard.

11. In Dr. Dilip Kumar Deka and another v. State of Assam and another[4], after referring to the authorities in State of Uttar Pradesh v. Mohammad Naim[5], Jage Ram v. Hans Raj Midha[6], R.K. Lakshmanan v. A.K. Srinivasan[7] and Niranjan Patnaik v. Sashibhusan Kar[8], this Court opined thus: -

"7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice."

12. At this juncture, it may be clearly stated that singularly on the basis of the aforesaid principle the disparaging remarks and directions, which are going to be referred to hereinafter, deserve to be annulled but we also think it seemly to advert to the facet whether the remarks were really necessary to render the decision by the learned single Judge and the finding recorded by the Division Bench that the observations are based on the material on record and they do not cause any prejudice, are legally sustainable. As far as finding of the Division Bench is concerned that they are based on materials brought on record is absolutely unjustified in view of the following principles laid down in Mohammad Naim (supra): -

"It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct."

13. On a perusal of the order we find that two aspects are clear, namely, (i) that the appellant was not before the court, and (ii) by no stretch of logic the observations and the directions were required to decide the lis. We are disposed to think so as we find that the learned single Judge has opined that the order of suspension was unjustified and that is why it was revoked. He has also ruled that there has been arbitrary exercise of power which was amenable to judicial review and, more so, when the charges were dropped against the employee. Commenting on the second charge- sheet dated 15.3.2004 the learned single Judge, referring to the decisions in State of Andhra Pradesh v. N. Radhakishan[9], State of Punjab and others v. Chaman Lal Goyal[10], The State of Madhya Pradesh v. Bani Singh and another[11] and P.V. Mahadevan v. M.D. T.N. Housing Board[12], thought it appropriate to quash the same on the ground of delay. The conclusion could have been arrived at without making series of comments on the appellant, who, at the relevant time, was the Chief

Minister of the State.

14. At this juncture, we think it apt to point out some of the observations made against the appellant: -

"Arrogance of power by the Chief Minister seems to be at play in this case" xxx xxx xxx "The petitioner is also justified in making a grievance that first the Chief Minister had suspended him on the basis of a loose talk in the press conference and thereafter the officials of the Government have attempted to justify their own mistakes on the one pretext or the other. The petitioner would term this case to be "a proof of worst ugly look of Indian democracy". He may be an aggrieved person but his anger is justified to refer this treatment to be an ugly face of democracy. Is not it dictatorial display of power in democratic set up? Final order is yet to be passed regarding this charge sheet. It is orally pointed out that the charge sheet is finalized on 16.9.2009. It is done without holding any enquiry or associating the petitioner in any manner. How can this be sustained in this background?" xxx xxx xxx "Chief Minister was bound to inform himself of the well known maxim "be you ever so high, the law is above you".

xxx xxx xxx "The respondents, thus, have made themselves fully responsible for this plight of the petitioner on account of the illegalities that have been pointed out and which the respondents have failed to justify in any cogent or reasonable manner. They all are to be held accountable for this. This would include even the then Chief Minister, who initiated this illegal process and did not intervene to correct the illegality ever thereafter." xxx xxx xxx "The interest awardable shall be recovered from all the officers and including the Chief Minister, who were either responsible for placing the petitioner under suspension or in perpetuating the illegality and had unnecessarily charged and harassed the petitioner." xxx xxx xxx "Liberty is, therefore, given to the petitioner to seek compensation for the harassment caused to him by approaching any appropriate Forum, including Civil Court, where he can seek this compensation even from the then Chief Minister."

15. On a studied scrutiny of the judgment in entirety we have no hesitation in holding that the observations made by the learned single Judge were really not necessary as an integral part for the decision of the case as stated in Mohammad Naim's case. Needless to say, once the observations are not justified, as a natural corollary, the directions have to be treated as sensitively susceptible.

16. In this context, it is necessary to state about the role of a Judge and the judicial approach. In State of M.P. v. Nandlal Jaiswal[13], Bhagwati, CJ, speaking for the court expressed strong disapproval of the strictures made by the learned Judge in these terms: -

"We may observe in conclusion that judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise 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."

17. In A.M. Mathur v. Pramod Kumar Gupta and others[14] the Court observed that judicial restraint and discipline are necessary to the orderly administration of justice. The duty of restraint and the humility of function has to be the constant theme for a Judge, for the said quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Further proceeding the two-Judge Bench stated thus: -

"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 the 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 be neither good for the judge nor for the judicial process."

18. In Amar Pal Singh v. State of Uttar Pradesh and another[15], it has been emphasized that intemperate language should be avoided in the judgments and while penning down the same the control over the language should not be forgotten and a committed comprehensive endeavour has to be made to put the concept to practice so that as a conception it gets concretized and fructified.

19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum. A judgment may have rhetorics but the said rhetoric has to be dressed with reason and must be in accord with the legal principles. Otherwise a mere rhetoric, especially in a judgment, may likely to cause prejudice to a person and courts are not expected to give any kind of prejudicial remarks against a person, especially so, when he is not a party before it. In that context, the rhetoric becomes sans reason, and without root. It is likely to blinden the thinking process. A Judge is required to remember that humility and respect for temperance and chastity of thought are at the bedrock of apposite expression. In this regard, we may profitably refer to a passage from Frankfurter, Felix, in Clark, Tom C.,[16]:

"For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians – those impersonal convictions that make a society a civilized community, and not the victims of personal rule,"

20. The said learned Judge had said: -

> "What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude towards law, the habits of mind that he has formed or is capable of unforming, his capacity for detachment, his temperament or training for putting his passion behind his judgment instead of in front of it.[17]"

21. Thus, a Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No

heroism, no rehtorics.

22. Another facet gaining significance and deserves to be adverted to, when caustic observations are made which are not necessary as an integral part of adjudication and it affects the person's reputation – a cherished right under Article 21 of the Constitution. In Umesh Kumar v. State of Andhra Pradesh and another[18] this Court has observed: -

"Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others."

23. In Kiran Bedi v. Committee of Inquiry and another[19] this Court reproduced the following observations from the decision in D.F. Marion v. Davis[20]:

"25. ... 'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property."

24. In Vishwanath Agrawal v. Sarla Vishwanath Agrawal[21], although in a different context, while dealing with the aspect of reputation, this Court has observed that reputation is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

25. In Mehmood Nayyar Azam v. State of Chhattisgarh and others[22] this Court has ruled that the reverence of life is insegregably associated with the dignity of a human being who is basically divine, not servile. A human personality is endowed with potential infinity and it blossoms when dignity is sustained. The sustenance of such dignity has to be the superlative concern of every sensitive soul. The essence of dignity can never be treated as a momentary spark of light or, for that matter, "a brief candle", or "a hollow bubble". The spark of life gets more resplendent when man is treated with dignity sans humiliation, for every man is expected to lead an honourable life which is a splendid gift of "creative intelligence". When a dent is created in the reputation, humanism is paralysed.

26. In Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others[23], while dealing with the value of reputation, a two-Judge Bench expressed thus: -

"The expression 'life' has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardized and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words

of Chapter II of Bhagwad-Gita :

Sambhavitasya Cha Kirti Marnadati Richyate"

27. The aforesaid principle has been reiterated in State of Maharashtra v. Public Concern for Governance Trust and others[24].

28. In view of the aforesaid analysis, we have no hesitation in holding that disparaging remarks, as recorded by the learned single Judge, are not necessary for arriving at the decision which he has rendered, the same being not an integral part and further that could not have been done when the appellant was not a party before the court and also he was never afforded an opportunity to explain his conduct, and the affirmation of the same by the Division Bench on the foundation that it has not caused any prejudice and he can fully defend himself when a subsequent litigation is instituted, are legally unacceptable. Accordingly, we expunge the extracted remarks hereinbefore and also any remarks which have been made that are likely to affect the reputation of the appellant. Since, the appeal is confined only to expunging of adverse remarks, the same is allowed. There shall be no order as to costs.

.....J.

[Anil R. Dave] .....J.

[Dipak Misra] New Delhi;

January 31, 2014.

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[1] 1992 Supp (1) SCC 222
[2] (2004) 10 SCC 88
[3] (2004) 12 SCC 201
[4] (1996) 6 SCC 234
[5] AIR 1964 SC 703
[6] (1972) 1 SCC 181
[7] (1975) 2 SCC 466
[8] (1986) 2 SCC 569
[9] (1998) 4 SCC 154
[10] (1995) 2 SCC 570
[11] JT 1990 (2) SC 54
[12] (2005) 6 SCC 636
[13] (1986) 4 SCC 566
[14] (1990) 2 SCC 533
[15] (2012) 6 SCC 491

[16] Mr. Justice Frankfurter : 'A Heritage for all Who Love the Law,' 51 A.B.A.J. 330, 332 (1965) [17] -FRANKFURTER, Felix, Foreword, to Memorial issue for Robert H. Jackson, 55 Columbia Law Review (April, 1955) P. 436 [18] (2013) 10 SCC 591 [19] (1989) 1 SCC 494 [20] 217 Ala 16 : 114 So

357 : 55 ALR 171 (1927) [21] (2012) 7 SCC 288 [22] (2012) 8 SCC 1 [23] (1983) 1 SCC 124 [24] (2007) 3 SCC 587