C.V.L. Subrahmahyam vs K. Venkateshwarlu And Ors. on 28 February, 1992

Equivalent citations: 1993(1)ALT430

ORDER

P.L. Narasimha Sarma, J.

1. This application is filed for punishing respondents 1 to 5 under the Contempt of Courts Act (Act 70 of 1971) (hereinafter referred to as 'the Act').

2. The facts which are either admitted or borne out of the record are as follows: Petitioner is working as a Lecturer in Economics in C.S.R. Sarma College, Ongole from 1973. He was elected as the Chairman of the Staff Association. As the Chairman of the Staff Association, he became the Officio Member of the Governing Body of the C.S.R. Sarma College, Ongole (for short 'College'). The College was one of the centres for conducting Intermediate Public examinations. Certain irregularities with regard to invigilation seem to have been committed during the course of the conduct of the Intermediate public examinations, with which we are not concerned in these proceedings. The governing body of the college met on 24-4-1988 to consider the alleged irregularities committed as mentioned above. It is stated by the petitioner that the said item was net in the Agenda for discussion and that it is a matter which has to be dealt with by the Board of Intermediate as per the rules and not for the governing body. However, the governing body passed a resolution constituting a committee to enquire into the alleged irregularities in spite of the dissent of the petitioner. Questioning the said resolution constituting an enquiry committee, the affected lecturers filed O.S.No. 23 of 1988 in the Court of Vacation Civil Judge, Ongole. The said suit was subsequently re-numbered as O.S.No. 286 of 1988. Plaintiffs therein filed I.A.No. 194 of 1988 in the said suit for injunction with which we are not concerned in these proceedings. The petitioner herein filed an affidavit in the said I.A.No. 194 of 1988 as third party to the suit. In the said third party affidavit filed by the petitioner, he stated that constitution of the committee for enquiring into the alleged irregularities was not on the Agenda and when the matter was brought up by the Secretary and Correspondent for consideration, he objected for the matter being raised in the Governing body meeting and his protest and dissent was not considered and he was not allowed to make a note of dissent in the minutes book, etc.

3. First respondent as the Secretary and Correspondent of the College issued a notice dated 16-8-1988 to the petitioner calling upon him to explain as to why disciplinary action may not be initiated against him for filing false and motivated affidavit in I.A.No. 194 of 1988 in O.S.No. 23 of 1988 on the file of Vacation Civil Judge (District Judge) Ongole. The petitioner was asked to submit his explanation within a week of the receipt of the said notice and further stating that if no explanation is received within the said period, further action would be initiated on the presumption

that the petitioner has no explanation to offer. Explanation dated 24-9-1988 was submitted by the petitioner. It was admitted therein that he filed the affidavit as it was necessitated in the prevailing circumstances and that whatever he stated therein is true and that he was acting throughout as Member of the governing body representing the staff. He also stated that the suit is pending and therefore, first respondent has no right to determine the truth or otherwise of the affidavit filed by the petitioner and that it is the function of the Court to determine the same. Issuance of the notice constitutes nothing but gross interference with the due course of judicial proceedings and that it amounts to contempt of court. He also justified the filing of the third party affidavit. Thereafter, another notice was issued by the first respondent on 5-9-1988 to the petitioner calling upon him to submit his explanation as to why disciplinary action should not be taken against him for the intemperate and. threatening language used in the explanation submitted by him dt.24-8-1988 and also attributing motives to the respondents. A reply was sent by the petitioner again on 10-9-1988 to the said second notice dated 5-9-1988, saying that the explanation was not taken in a proper perspective etc. Thereafter, the governing body considered all the facts and passed a resolution dated 6-11-1988 in the following terms:

> "The Governing Body Meeting held on 6-11-1988, adopted a resolution (Sri P. Satyanarayana; Staff Representative dissenting) .... Sri C.V.L. Subrahmanyam, former Chairman of College Teachers' Association committed grave error in filing a false affidavit in the Vacation Civil Judge's Court, Ongole (Additional District Judge, Ongole) in O.S.No. 23/88 and thus bringing the College and its Management to disrepute and his explanations dated 24-8-1988,10-9- 1988 are couched in a most threatening language. The said teacher did not express even one word of regret. On the other hand in his explanation dated 24-8-1988 with serious aspersions and levelled grave charges against the management which this meeting feels should not go unpunished. Therefore, after careful consideration, this meeting resolves to withhold two annual increments which this teacher would earn in future. This punishment of withholding the two annual increments will have cumulative effect."

As per the resolution, a punishment of withholding of two annual increments with cumulative effect was imposed on the petitioner. First respondent by his letter dated 4-4-1989 communicated to the petitioner the fact that the governing body at their meeting held on 6-11-1988 resolved to impose a punishment of withholding two annual increments with cumulative effect on the petitioner. The same was served on the petitioner on 6-4-1989. The petitioner filed an appeal to the Regional Joint Director questioning the punishment imposed by the management as provided under the A.P. Education Act on 3-5-1989. It is stated that the appeal was allowed by the Regional Joint Director on 4-12-1990 and the management filed a revision on 31-3-1991 and the same is stated to be pending.

4. In view of what is stated above, the petitioner filed this application for punishing the respondents, who are the members of the governing body of the College, under the Contempt of Courts Act as stated above. According to the petitioner, passing of the resolution on 6-11-1988 by the governing body of the College imposing punishment of stoppage of two annual increments with cumulative effect on him for filing an affidavit in I.A.No. 194 of 1988 in O.S.No. 23 of 1988 on the file of

Vacation Judge, Ongole, amounts to gross interference with the judicial process of the Court. Therefore, the petitioner prayed that the respondents should be punished under the provisions of the Contempt of Courts Act.

5. Counter is filed by first respondent which was adopted by respondents 2 to 5. The material averments in the counter in so far as they are relevant for the purpose of these proceedings are as follows:

6. According to the first respondent resolution constituting enquiry committee was an unanimous one and no dissent was expressed by the petitioner. The allegation contained in the third party affidavit that he dissented to the resolution dated 24-4-1988 is not correct and that the said statement contained in the affidavit of the petitioner is false and motivated. Therefore, a show cause notice dated 16-8-1988 was issued to the petitioner calling upon him to submit his explanation as to why disciplinary action should not be initiated against him and that subsequently punishment was imposed by the governing body on a consideration of the explanation submitted by the petitioner. It was stated specifically that passihg of the resolution on 6-11-1988 imposing punishment on the petitioner for filing a false affidavit in I.A.No. 194 of 1988 will neither interfere nor tends to interefere with, or obstructs or tends to obstruct, the administration of justice and therefore, they are not liable to be punished for contempt of Court.

7. A reply was also filed by the petitioner with regard to the irregularities alleged to have been committed during the conduct of Intermediate public examinations. The petitioner reiterated that the subject matter of constituting a committee was not on the Agenda on 24-4-1988, before the governing body and he reiterated generally whatever he stated in his main affidavit.

8. It is also necessary to refer to the other relevant facts to appreciate the contentions in the case. The letter dt.4-4-1989, sent by first respondent - Secretary and Correspondent of the College to the petitioner informing about the punishment imposed by the resolution of the governing body dt.6-11-1988, was received by the petitioner on 6-4-1989 as mentioned above. He filed an application for permission of the Advocate General to move this Court on 31-3-1990. Permission was granted on 3-4-1990 by the Advocate General and on the very same date i.e., 3-4-1990, present application for punishing the respondents under the Contempt of Courts Act was filed. However, notice was issued on this application i.e., CC.No. 291 of 1990 by this Court only on 14-8-1990.

9. The sum and substance of the petition is that the resolution passed by the respondents, constituting the governing body, on 6-11-1988 imposing punishment on the petitioner for filing a third party affidavit in I.A.No. 194 of 1988 in O.S.No. 23 of 1988 interfers or tends to interfere with due process of judicial proceedings and in any event interferes or tends to interfere or obstructs or tends to obstruct the administration of justice and therefore, the respondents are liable for punishment under the provisions of the Act.

10. Respondents, as stated above, not only contended that the passing of resolution does not interfere or tends to interfere with the judicial process or obstructs or tends to obstruct the administration of justice, but also raised the contention that the application was barred by

limitation.

11. Therefore, two points arise for consideration:

> (1) Whether the resolution passed by the governing body consisting of respondents on 6-11-1988 communicated to the petitioner on 6-4-1989 interferes or tends to interfere with the judicial process or obstructs or tends to obstruct the administration of justice?
>
> (2) Whether the application filed for punishing the respondents is barred by limitation?

12. Point No. 1: The facts have been exhaustively given in the foregoing paragraphs. In I.A.No. 194 of 1988 in O.S.No. 23 of 1988 on the file of Vacation Civil Judge, Ongole, the petitioner herein as a third party to the proceedings, filed an affidavit stating that the resolution passed by the governing body on 24-4-1988 constituting a committee to enquire into the alleged irregularities committed during the conduct of the Intermediate public examinations was not unanimous one and that he dissented. Respondents herein, on the ground that the resolution passed was an unanimous one and that the allegations made in the affidavit of the petitioner are false, took disciplinary action which culminated ultimately in the imposition of punishment by way of stoppage of two annual increments with cumulative effect. Whether this resolution amounts to interference or tends to interfere with the judicial process or obstructs or tends to obstruct the administration of Justice is the question to be decided.

13. Sri P. Venkateshwarlu, learned counsel for the petitioner cited a judgment in Abdul Gafoor v. State of A.P. 1975 ILR(A.P.) 168., in support of his contention. The facts in the above case are: Certain lands belonging to one Adbul Khader situated within the jurisdiction of Gollaguda village were the subject matter of land acquisition proceedings. The claimants filed O.P.No. 60 of 1988 for enhancement of compensation and the same was before the District judge, Nalgonda. In the said proceedings, patwari of Gollaguda village was examined on behalf of the Government as a witness. Revenue Divisional Officer,'Nalgonda, at the instance of the District Collector, Nalgonda, served a memo dated 30th October, 1968 on the petitioner therein, whereby Abdul Gafoor, patwari was called upon to explain as to why disciplinary action should not be taken against him for giving damaging evidence to the case of the Government and deposing substantially against the award given by the Deputy Collector. The charges relate wholly and solely to the evidence which Abdul Gafoor, patwari, gave in the Court. Patwari submitted his explanation. Ultimately, a second show-cause notice was issued as to why he should not be removed from service. Patwari was removed from service. The said removal of patwari from service was the subject matter of the writ petition. Gopal Rao Ekbote, J. (as he then was), on a consideration of the decisions placed before him, held that disciplinary action cannot be taken against a witness because he gave evidence and that will amount to victimisation of the person and it would amount to wrongful or unlawful dismissal, for which the witness may institute action for damages, The learned Judge held that the action taken for giving evidence in a Court of law, would amount to contempt of court. So holding, the learned Judge allowed the writ petition and quashed the dismissal order. The learned Judge,

during the course of the judgment, stated as follows:

> "It is patent enough that a witness must be free and undeterred if he is to assist the Court in a fair way. Any impediment thrown across a witness in this regard tantamounts to interference with the course of justice inasmuch as the witness would be handicapped in functioning normally qua witness in answer to a Court's summons. It is expected that a witness who has been summoned or produced to give evidence will assist the Court in telling what he believes to be true. His assistance for the sake of administration of justice is considered very essential and that is why the cloak of protection is thrown round him. While coming to the Court to give evidence or duirng the course of evidence, or after he completes the evidence he cannot be intimidated or victimised qua witness."

The learned Judge further held as follows:

> "It is now fairly settled that an intimidation or victimisation of a witness during or after the case in which he gives the evidence is contempt of the Court and the person who indulges in any act amounting to contempt of the Court can be punished by the appropriate Court."

14. From the above, it is clear that if a person is proceeded against on the ground that he gave evidence in a Court of law, it amounts to interference with the administration of justice and it amounts to contempt of the Court and the person who indulges can be punished by the appropriate Court It is also further clear that filing affidavit is also one mode of giving evidence.

15. The affidavit filed in I.A. No. 194 of 1988. it is not disputed, constitutes evidence. I A.No. 194 of 1988 itself was filed for injunction under Order 39, Rules 1 and 2 of C.P.C. Therefore, the affidavit filed therein is evidence. It is clear that the resolution dated 6-11-1988 imposing punishment on the petitioner was passed in view of the fact that the petitioner filed an affidavit in I. A.No. 194 of 1988 in O.S. No. 23 of 1988.

16. Having regard to the facts and in the circumstances, we are of the opinion that the resolution passed by the governing body on 6-11-1988 punishing the petitioner for filing the affidavit in I.A.No. 194 of 1988 in O.S.No. 23 of 1988, interferes or tends to interfere with the administration of justice within the meaning of Clause (c) of Section 2 of the Contempt of Courts Act, 1971 and therefore, constitutes criminal contempt of Court and the respondents are liable for punishment on that ground.

17. One of the contentions raised on behalf of the respondents was that the punishment was not imposed, by the resolution, on the petitioner only for filing the affidavit in I. A.No. 194 of 1988, but it was imposed on the petitioner for using intemperate and threatening language in his explanation dated 24-8-1988. We are unable to appreciate this contention. The language of the resolution is clear and specific and it is in unmistakable terms. A reading of the same establishes that the punishment was imposed on the petitioner for committing gross error in filing false affidavit in the

Vacation Civil Court, Ongole and thus bringing the College and its management to disrepute. The explanation was only referred to, to show that the teacher did not express even one word of regret, but used threatening language. We have no doubt in our mind that the imposition of punishment on the petitioner is only for filing the affidavit in I.A.No. 194 of 1988 in O.S.No. 23 of 1988.

18. Point No. 2: For appreciating this contention, it is necessary to extract Section 20 of the Contempt of Courts Act.

> "20. Limitation for action for contempt:- No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

It is already noticed in the foregoing paragraphs that the resolution imposing punishment was passed by the governing body on 6-11-1988. The same was communicated by first respondent with his covering letter dated 4-4-1989 to the petitioner on 6-4-1989. It is true that, according to the respondents, the resolution was communicated to the petitioner on 15-11-1988 itself, while according to the petitioner, resolution was communicated to him on 6-4-1989. There is no evidence on record to establish that the said resolution was communicated to the petitioner on 15-11-1988. We proceed on the basis that the same was communicated to the petitioner on 6-4-1989. Petitioner filed the application for permission to file the contempt petition, before the Advocate General, on 31-3-1990. Permission was accordingly granted on 3-4-1990 by the Advocate General. The petition for punishing the respondents for contempt was presented in this Court on 3-4-1990. Notice was issued by this Court to the respondents on the said application on 14-8-1990. The short question that arises now is, whether the period of one year prescribed under Section 20 of the Act should be reckoned from 6-4-1989 to 3-4-1990 when the contempt application was filed in this Court or the period should be reckoned from 6-4-1989 to 14-8-1990 on which date this Court issued notice to the respondents. If 3-4-1990 is to be taken as the date of the initiation of the proceedings for contempt, it is within time. However, if it is to be held that issuance of notice by this Court on 14-8-1990 to the respondents is the date of initiation of the contempt proceedings, it is barred by limitation.

19. While the petitioner contends that the contempt proceedings are initiated on his filing the said application on 3-4-1990, respondents contend that initiation is not the same thing as the filing of the petition for contempt into Court, but "initiation" means issuance of the notice by this Court on 14-8-1990 and therefore, the application is barred by limitation.

20. To appreciate the rival contentions, it is necessary to find out the correct meaning of the word "initiation" occurring in Section 20 of the Act.

21. In this context, on behalf of the respondents, reliance was placed on a judgment of the Supreme Court in Baradakanta v. Misra, C.J., Orissa High Court, AIR 1947 SC 2255 The point that arose before the learned Judges of the Supreme Court was in the following circumstances.

22. Orissa High Court suo motu issued a notice dated 3rd July, 1972 to the Contemnor therein, calling upon him to show cause why he should not be punished for contempt of Court. In answer to

the notice, the contemnor appeared before the Court and raised a contention, among others, that whatever he stated in his representation to the Governor relate to only administrative functions of the judges and, therefore, it did not amount to contempt of Court and that point should be decided as a preliminary issue. The High Court rejected his plea that the said point should be decided as a preliminary issue. Against the said decision refusing to decide that point as a preliminary issue, the contemnor filed an appeal before the Supreme Court under Section 19(2) of the Act The learned Judges of the Supreme Court held that no appeal lies against the refusal by the High Court to dispose of the plea raised by the contemnor as a preliminary one. While considering that aspect, the learned Judges referred to all the provisions of the Contempt of Courts Act. In para 2 of the judgment itself the learned Judges, while narrating the facts, stated as follows:

> "The proceeding for contempt initiated by this notice was numbered as Criminal Miscellaneous Case No. 8 of 1972."

The learned Judges indicated that the true meaning of the word "initiation" is the issuance of the notice on the contempt application by the Court. In the very same judgment, while referring to the provisions of the Act, the learned Judges stated as follows:

> "The motion or reference is only for the purpose of drawing the attention of the Court to the contempt alleged to have been committed and it is for the Court, on a consideration of such motion or reference, to decide, in exercise of its discretion, whether or not to initiate a proceeding for contempt.....;.... The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court, though moved by motion or reference, may in its discreption, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court."

The learned Judges clearly held that mere a motion being made by the Advocate General or any other person with the consent of the Advocate General to the Court will not amount to "initiation" of the proceedings. It is only when the Court considers that motion and issues notice to the respondents, it can be said that the Court "initiated" the proceedings.

23. The above said judgment was also referred to and followed in Purshotam Dass v. B.S. Dhillon, . In this case also, the point that was raised was, whether an appeal lies to the Supreme Court under Section 19(1) of the Act on mere issuance of the notice by the Court. The learned Judges held that no appeal lies. However, this decision is not directly in point to the question involved in this case.

24. In Advocate General v. A. V. Koteszvara Rao, 1984 (1) ALT. Jagannadha Rao, J. (as he then was) had considered a similar question. In the said case alleged contempt was said to have been committed on 16-4-1982 and 4-5-1982. The application for contempt of Court was filed on 2-11-1982

in the High Court. It came up for consideration before a learned Judge on 3-12-1982 and adjurned and ultimately, it came up before another learned Judge on 7-12-1982 on which date, it was adjourned by six months. Later on, it was posted before jagannadha Rao, J. on 24-6-1983 for the first time and notice was issued on the said application to the respondenton 19-8-1983 before admission. The learned Judge,onaconsideration of the decisions cited before him, including the judgment referred to supra (2), held that "Initiation of a contempt proceeding is the time when the Court applies its mind to the allegations in the petition and dec ides to direct, under Section 17 the alleged contemnor to show cause why he should not be punished."

The learned Judge in the said case held that the application was barred by limitation as the contempt was alleged to have been committed on 16-4-1982 and 4-5-1982 and the notice was issued only on 19-8-1983, which is beyond one year as prescribed under Section 20 of the Act.

25. This judgment was referred to and approved by a Division Bench of this Court in Kishan Singh v. Hon. Mr. T. Anjaiah. In the said case, High Court passed an order on27-2-1981 in W.A.M.P.No. 142 of 1981 in W.A.No. 509 of 1977. Contending that there is violation of the order on 5-7-1981, the application for contempt was presented on 13-7-1981. It came up before a Division Bench of this Court on 12-8-1981 on which date, it was dismissed insofar as respondents 1 and 2 are concerned. But insofar as respondents 3 and 4 are concerned, the same was adjourned for filing a better affidavit. Thereafter, it came up before the Division Bench. The learned Judges, after referring to several cases including the one referred to supra (4), held that initiation of the contempt proceedings is the time when the Court applies its mind to the allegations in the petition and decides to direct, under Section 17 the alleged contemnor to show cause why he should not be punished. The learned Judges clearly held that the application was barred by limitation. It is unnecessary to multiply the decisions on the point.

26. Sri P. Venkateshwarlu, learned counsel for the petitioner, however, relied upon a judgment in Court v. Kasturi Lal (FB) . We do-not find any support in the said judgment to the contention raised by the learned counsel for the petitioner that the contempt should be deemed to have been initiated on the date when the application was filed.

27. In the present case, as stated above, resolution of the governing body, which is said to be the act of contempt, was passed on 6-11-1988. The same was communicated to the petitioner on 6-4-1989 (admittedly). Notice was issued by the High Court on the application for contempt on 14-8-1990, i.e., beyond one year from the date of the alleged contempt, viz., 6-4-1989, Mere filing of the application on 3-4-1990 will not save limitation under Section 20 of the Act.

28. Having regard to the decisions referred to supra and on the facts and in the circumstances, we hold that this application for punishing the respondents for contempt of Court is barred by limitation. Accordingly, we dismiss this application.