

PETITIONER:
STATE OF U.P. & ORS.

Vs.

RESPONDENT:
ASHOK KUMAR SAXENA AND ANOTHER ETC.

DATE OF JUDGMENT: 04/02/1998

BENCH:
K.T. THOMAS, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

SRINIVASAN. J.

This is a case of gross abuse of power by the High Court in its exercise of contempt jurisdiction. The High Court has not only misunderstood the scope of its own order but also been overzealous in the purported enforcement of the same with the result it has passed a totally unwarranted order casting a stigma on the appellant in Civil Appeal No. 748 of 1997 who was then the Engineer-in-Chief, Department of Irrigation, Lucknow (U.P.). The two S.L.Ps bracketed with the appeal are against the same order - one by the State Government and its officials and the other by the second respondent in the above appeal. For the sake of convenience, we will refer to the parties by their ranks in the civil appeal and the petitioners in S.L.P. No.21052 of 1996 as the State Government.

2. By order dated 7.10.1995 the State Govt. transferred the first respondent herein who was working as Assistant Engineer from Northern Division. Ganga Canal, Roorki to IIIrd Sub-Division, Dhampur, Irrigation Department, Moradabad. By the same order the second respondent who was working as Assistant Engineer at Dhampur was attached to Irrigation Department, Moradabad. The second respondent filed a writ petition in the High Court challenging the order of transfer. A Division Bench of the High Court dismissed the petition in limine on 16.10.1995 by the following order:

"Sri R.S. Yadav for petitioner and Sri Afsar for the respondents are heard. By the impugned order the petitioner is transferred from Dhampur to Moradabad which is only 70 Km, away from Dhampur. It is a transfer matter and no interference in such a matter is called for in the writ jurisdiction. The petition has no merit and is accordingly dismissed"

3. On 18.10.1995 the President's Rule was imposed in the State. Orders were issued by the Chief Secretary for

reviewing various important orders passed by the previous Government between 1.10.95 and 18.10.95 including the orders of transfer of officials. Consequently the appellant passed an office order dated 31.10.1995 staying the order of transfer dated 7.10.1995. Accordingly the first respondent reported back at Northern Division, Ganga Canal Roorki on 11.11.1995. On 19.12.1995 the appellant issued fresh orders of transfer in accordance with Government order dated 12.12.1995 posting the first respondent at Eastern Ganga Canal Construction Circle, Haridwar. The first respondent challenged the same as well as the earlier order dated 31.10.1995 in writ Petition No. 4078 of 1996. On 1.2.1996 the High Court passed an order in the following terms:

"It appears that this Annexure-2 was passed by the Engineer-in-Chief after respondent had failed to obtain any order in his favour from the High Court and the order of transfer was challenged by Respondent No.5 in This Court. The Court did not grant any relief in his Favour but soon thereafter the represented to the Engineer-in-in-Chief. The Engineer-in-Chief passed the order staying the first order dated 7.10.1995, whereby the petitioner had already been functioning at Dhampur. We, therefore, direct that irrespective of any one of these irrespective of any one of these annexures contained in Annexures 1,2 and 3 the petitioner shall continue to function at Dhampur and Respondent No.5 will continue on the post which he is holding. The petitioner is satisfied to continue at Dhampur"

The first respondent filed an application for clarification in the last sentence of the first paragraph. That application was ordered on 14.2.96 by which the second respondent was to continue in the post which he was holding Moradabad. It is stated that both the aforesaid orders were passed without issuing notice to the second respondent though he was the fifth respondent in the writ petition.

4. On coming to know the orders, the second respondent filed an application for recalling the previous orders. Which that application came up on 24.5.1996 the counsel for the first respondent could not be present on account of the illness and the Court adjourned the said application on that ground. However, the Court observed that the second respondent had no grievance with the order by which the first respondent was directed to continue to function at Dhampur. The Court also observed that the authorities should be at liberty to pass any appropriate order relating to the posting of the second respondent herein.

5. The matter came up before the Court on 3.7.1996. The Court opined that the matter could not be proceeded without the physical presence of the appellant in the Court and directed its Registrar to communicate the order to the Engineer-in-Chief, Irrigation Department, U.P. asking him to produce the appellant before it positively on 8.7.1996. Even at that stage the Court directed that if the appellant "evades his presence in Court on that date, he shall be brought into police custody with the assistance of

Superintendent of Police of the area where he has been serving". The Court also directed the order to be sent by Fax as well as personal messenger to the Engineer-in-Chief besides by Fax to the Chief Secretary of the State and simultaneously to the Principal Secretary of the Irrigation Department. Above all, the Court directed the Additional Chief Standing Counsel Mr. Hussain to take appropriate steps for execution of that order. In our opinion, there was no circumstance warranting the over-anxiety displayed by the Court in that order. There is no presumption that a responsible officer of the Government would disobey an order of the Court requiring his presence in Court on a particular date. What was the occasion for the Court to direct the officer to be taken into police custody even when it was only issuing a notice calling upon him to be present? Significantly, the order did not indicate anywhere that it was issuing a notice of contempt.

6. But in the order passed on 5.7.1996 the Court described him as "alleged contemnor". In that order the Court stated that second respondent herein desired to withdraw his review applications and all other pleadings in the writ petition though according to second respondent he was compelled by the Court to do so. The Court also recorded that the first respondent herein stated that he did not pursue his writ petition in view of the fact that the order of transfer dated 7.10.1995 had been implemented in the sense that he was working at Dhampur. Taking note of the same, the Court observed that it did not propose to pass any further order as the respondents 1 and 2 shall continue at their places of posting according to the original order of transfer dated 7.10.1995. However, the Court proceeded to hold that the action of the appellant amounted to contempt in as much as he had dared to stay the order of transfer after the writ petition filed by the second respondent herein was dismissed by the Court. The Court opined that the order dated 16.10.1995 dismissing the writ petition filed by the second respondent court a final real of the Court on the order of transfer dated 7.10.95 and therefore the subsequent order dated 31.10.95 passed by the appellant keeping in abeyance the order of transfer dated 7.10.95 would tantamount to a deliberate attempt on the part of the appellant to undo the Court's order and flout the same. The Court referred to unconditional apology tendered by the appellant and observed that its conscience did not permit it to accept the same. The Court said that instead of sending him to prison its displeasure be recorded at his conduct and he be warned to be more careful in future. The Court directed that the said remark be introduced in his confidential record. The Court also observed that respondents 1 and 2 herein would continue on the posts to which they were transferred by the order of transfer dated 7.10.95.

7. It is that order which is in challenge before us in these three matters. We are not concerned here with the correctness of the order of transfer passed by the State Government or the validity of the contentions put forward by respondents 1 and 2 against the same in the High Court. The parameters of the powers of a Court under Article 226 vis a vis an order of transfer for are well settled. In N.K. SINGH VERSUS UNION OF INDIA 7 ORS. (1994) 6 S.C.C. 98 this Court held that interference by judicial review is justified only in cases of mala fides or infraction of any professed norms or principles and where career prospects remain unaffected and no detriment is caused to the concerned Government employee, challenge to the transfer must be

eschewed. Reiterating the said proposition in Sri Abani Kanta Ray Versus State of Orissa & Ors. J.T. 1995 (7) S.C. 467 the Court added that transfer being an incidence or service, is not to be interfered with by the Courts unless it is shown clearly arbitrary.

8. In this case, the High Court passed an order on 18.10.95 dismissing the writ petition filed by the second respondent refusing to interfere with the order of transfer. Thereby the High Court upheld the validity of the order of the Government transferring the second respondent. By doing so the High Court did not and could not have put any fetters on the power of the Government to pass any subsequent order of transfer or re-call the order of transfer already made. The High Court had in occasion to restrict such powers of the Government which were in fact recognized and acknowledged by the Court in the very same order of dismissal. It cannot therefore be said by any stretch of imagination that by the said order the High Court put its final seal of approval of the order of transfer dated 7.10.1995 passed by the Government. The High Court had not and could not have taken over the administration of the State by the said order dismissing the writ petition. There was therefore no bar against the Government or the appellant withdrawing, altering or modifying the order of transfer passed on 7.10.95.

9. Forgetting the said fundamental principle the High Court proceeded to act on an erroneous premise that by directing the order of transfer dated 7.10.95 to be kept in abeyance the appellant had flouted the Court's order dated 16.10.95. The High Court was so much obsessed with that idea, it became over-anxious to see that its order as understood by it was carried out and the appellant who had stayed the order of transfer dated 7.10.95 was punished.

10. This Court has on several occasions pointed out that the power of punishment for contempt shall not be exercised lightly but should be exercised only to uphold the majesty of law and dignity of courts. In Babu Ram Gupta Versus Sudhir Bhasin and Another AIR 1979 Supreme Court 1528 this Court said:

"It is well settled that while it is the duty of the Court to punish a person who tries to obstruct the course of justice or brings into disrepute to the institution of judiciary this power has to be exercised not casually or lightly but with great care and circumspection and only in such cases where it is necessary to punish the contemner in order to uphold the majesty of law and the dignity of the courts."

10. It is needless to say that the facts in the present case did not warrant the exercise of power by the High Court to punish the appellant for contempt as he had not committed any contempt at all. There is no justification for the observations made by the High Court in the impugned order against the appellants conduct with a direction that the same should be introduced in his confidential record.

11. The direction contained in the last paragraph of the impugned order that respondents 1 and 2 will continue on the same posts to which they were transferred by order dated 7.10.95 will not prevent the Government from passing appropriate order of transfer in accordance with rules as and when it thinks fit.

12. The Civil Appeal is allowed and the impugned order of the High Court dated 5.7.1996 is set aside. The Special Levee Petitions are accordingly disposed of. No order as to costs.

JUDIS