Baradakanta Mishra,Ex-Commissioner ... vs Bhimsen Dixit on 29 September, 1972

Equivalent citations: 1972 AIR 2466, 1973 SCR (2) 495, AIR 1972 SUPREME COURT 2466, 1973 (1) SCC 446, 1973 MADLJ(CRI) 226, 1973 MPLJ 215 DA, 1973 2 SCR 495, 1973 SCC(CRI) 360, 1973 MAH LJ 220, 1973 SCD 356, 1973 SCD 1, 1973 (1) SCJ 536, 39 CUTLT 461, 39 CUTLT 53

Author: S.N. Dwivedi

Bench: S.N. Dwivedi, J.M. Shelat, Y.V. Chandrachud

PETITIONER:
BARADAKANTA MISHRA,EX-COMMISSIONER OF ENDOWMENTS

Vs.

RESPONDENT:
BHIMSEN DIXIT

DATE OF JUDGMENT29/09/1972

BENCH:
DWIVEDI, S.N.
BENCH:
DWIVEDI, S.N.
SHELAT, J.M.
CHANDRACHUD, Y.V.

CITATION:
1972 AIR 2466 1973 SCR (2) 495
1973 SCC (1) 446

ACT:
Orissa Hindu Religious Endowments Act--Appointment of interim trustee under s. 41 without enquiry--High Court's decision on the identical point not followed in bad faith by Commissioner of Endowments in revision amounts to contempt--Bonafide but erroneous distinguishing of a binding precedent not contempt.

HEADNOTE:
Under S. 27 of the Orissa Hindu Religious Endowments Act, the Additional Assistant Commissioner of Hindu Religious Endowments, appointed an interim trustee of two deities in a village in Orissa. The person in charge of the deities made

an objection under S. 41 of the said Act, that since the deities were consecrated under a private endowment, the Act did not apply to the facts of the case. The Additional Assistant Commissioner rejected the objection without making any inquiry under S.41. The objector filed a revision under s. 9 of the said Act, before the appellant.

During the period between the rejection of the objection and the filing of the revision, the Orissa High Court in Bhramarbar Santra & Ors. V. State of Orissa and Others, I.L.R. 1970 Cuttack 54 decided the identical question and (the High- Court) held that the Assistant Commissioner cannot appoint an interim trustee under s. 27 until he has held an inquiry under s. 41 and has found that there was no hereditary trustee of the religious institution.

At the hearing of the revision, the said decision of the High Court was cited before the appellant, but the appellant did not follow it and dismissed the revision.

The applicant filed a writ petition, in the High Court against this order. The Division Bench on hearing the applicant issued notice to contempt of the High Court to the applicant. The High Court took exception to the following sentence occurring at the end of paragraph 2 in his order

"Further, against the order we have moved the Supreme Court, and as such, the matter can be safely deemed to be sub-judice."

and held that the appellant was guilty of contempt of Court.

On appeal before this Court, it was contended that the appellant was not guilty of contempt of court, for, the sentence in the appellant's order, neither interfered with the administration of justice, nor scandalised the High Court.

Dismissing the appeal,

HELD : (1) Contempt of court is disobedience to the court by acting in opposition to the authority, justice and dignity thereof, it signifies the willful disregard or disobedience of the court's order. It also signified such conduct as tends to bring the authority of the court and the adminis-tration of law into disrepute, Oswald's Contempt of Court, 1910 Edn. pp. 5-6 referred to. [496D]

(ii) It is a common-place that where the superior court's order staying proceedings is disobeyed by the inferior court to whom it is addressed, the latter court commits contempt of court for it acts in disobedience

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the authority of the former court. The act of disobedience is calculated to undermine public respect for the superior court and to jeopardise the preservation of law and order. [496E]

(iii) The appellant is guilty of contempt. Firstly, on the date of the order, nothing was pending in the Supreme Court; only a petition was pending in the High Court form a certificate to appeal to the Supreme Court from the decision in Bhramarbar Santras Case' The appellant has thus made a

wrong statement of fact. Secondly, the use of the word "we" is also significant. it indicates that the appellant identified himself as a litigant in the case and did not observe due detachment and decorum as a quasi-.judicial authority. Lastly, it is not possible to believe that the appellant, who had 23 years of judicial experience, could have entertained the view that as soon as a petition for certificate to appeal to the Supreme Court was filed in the High Court against the decision, the binding character of the decision disappeared. it is, therefore, clear that the appellant deliberately avoided to follow the High Court's decision by giving wrong and illegitimate reasons and that his conduct is 'clearly mala-fide, [496 G]

Under Art. 227 of the Constitution, the High Court is vested with the power of superintendence over the Courts and tribunals in the State. Acting as a quasi-judicial authority, the appellant was also subject to the super-intendence of the High Court. Accordingly, the decisions of the High Court were binding on him. He could not get away from them by adducing factually wrong and illegitimate reasons. The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law, which will undermine respect for law laid on by the High Court and impair the constitutional authority of the High Court. Therefore, the High Court has rightly found the appellant guilty of contempt. A bonafide but mistaken act of distinguishing a binding precedent does not amount to contempt. [500B]

East India Commercial Co. Ltd., Calcutta & Anr. v. The Collector of Customs Calcutta, [1963] 3 S.C.R. 338, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 312 of 1971.

July 8, 1971 of the Orissa High Court in Original Criminal Misc. case No. 9 of 1970, C. K. Daphtary, A. K. Verma and B. P. Singh, for the appellant.

Lal Narain Sinha, Solicitor-General of India and U. P. Singh, for respondent No. 2, The Judgment of the Court was delivered by DWIVEDI, J. The appellant is a member of the Superior Judicial Service of the State of Orissa, He was at one time officiating as District Judge. At the relevant time he was functioning as Commissioner of Hindu Religious Endowments, Orissa. The office of the Commissioner is created by the Orissa Hindu Religious Endowments Act.

In village Sanabagalpur there are two deities. The Additional Assistant Commissioner of Hindu Religious Endowments took action under s. 27 of the said Act for appointing an interim trustee of the deities. The person incharge of the deities made an objection under s. 41 of the said Act that the

Act did not apply as the deities were consecrated under a private endowment made by him The Additional Assistant Commissioner rejected the objection by his order dated July 26, 1967. Without making any inquiry under s. 41, he held that prima facie there was a public endowment. He did not appoint the objector as a trustee of the deities. The objector filed a revision under s. 9 of the said Act before the appellant.

During the period intervening between the rejection of the objection by the Addl. Assistant Commissioner and the filing of the revision by the objector, the identical issue was raised before the Orissa High Court in Bhramarbar Santra and others v. State of Orissa and others(1). In that case the High Court held that the Asstt. Commissioner cannot appoint an interim trustee under s. 27 of the said Act until he has held an inquiry under s. 41 and has found that there was no hereditary trustee of the religious institution. At the., hearing of the revision the aforesaid decision was cited before the, appellant by the applicant. After hearing the parties, the appellant made the following order "1..... It is said on behalf of the petitioner that he has filed a petition under section 41 of the Act. But no evidence is produced to that effect, thereby disclosing that their plea is humbug. The next argument is that the learned Assistant Commissioner should have first decided that the institution has no hereditary trustee. The Assistant Commissioner has impliedly done so.

2. The next argument that without a final declaration as to the nature of the institution, no appointment under Section 27 can be made, does not seem to be correct. The decision in the High Court on Bantala case would not be applicable to this instance. Further against the order, we have moved the Supreme Court, and as such, the matter can be safely deemed to be subjudice.

3. In order to establish that the petitioner is the hereditary trustee, he has to file an application under section 41 of the Act. No doubt the court can initiate such a proceeding, But we should not do it where the institution appears to be safely a public one, in this instance, a Siva temple."

(1) I.L.R. 1970 Cuttack 54.

The applicant filed a writ petition in the High Court against this order. The Division Bench, on hearing the applicant, issued notice for contempt of the High Court to the appellant. The High Court took exception to the following sentence occurring at the end of paragraph 2 in his order : "Further, against the order we have moved the Supreme Court, and as such, the matter can be safely deemed to be sub judice."

The appellant appeared before the High Court in response to the notice. According to him the apparently objectionable sentence in his order "was not at all the basis for (his) decision." He said that the revision was dismissed by him after distinguishing the case before him from the facts of Bhramabar Santra. (1) He further Pleaded "that under the Constitution the decisions of the Supreme Court are law of the land. So, bonafide, was of the opinion that when a matter is under appeal, or otherwise before the Supreme Court, the point of law, becomes subjudice and only a decision of the Supreme Court in the matter, would be binding on the Subordinate Court." It was also pleaded that the proceeding before him was an administrative proceeding and that the act of not following the decision of the High. Court in such a proceeding "may not amount to contempt of court."

The High Court did not accept his pleas in justification. It was held that the appellant "refused to follow" the decision in Bhramarbar Santra 'and others.(1) The High Court further held that "we do not And any trace of bona fides of the condemner in the order dated 19th January, 1970..... The condemner is a senior judicial officer who has already

-put in 23 years of service; having been recruited as a Munsif he has now risen to the rank of District Judge. We regret to find that though he has functioned as a judicial officer for about 23 years he has not been able to pick up the approach and attitude of a judicial officer and has actuated by the bias so often manifested in action of the

-executive today while disposing of a judicial proceeding and when found fault with has come up with the stand that he was acting administratively."

After examining the matter further, the High Court said :

> "The conduct of the condemner far from being bonafide is clearly a malafide one and he intentionally avoided to follow the decision of this Court by advancing grounds which were most inappropriate." On that view of the matter the High Court found him guilty of contempt of court and admonished him in open court and directed him to pay Rs. 300 as costs of the proceedings.
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> Shri Daphtary, counsel for the appellant, rightly did not seek to support the justification pleas. His argument now is that the (1) I.L.R. 1970 Cuttack 54.

appellant is not guilty of contempt of Court, for the sentence in the appellant's order, found objectionable by the High Court, neither interferes with the administration of justice nor scandalises the High Court. Shri Daphtary as well as the Solicitor-General appearing for the State have stated before us that there is no decided case either in support of or against the argument. But the absence of a precedent should not preclude an act being held to be contempt merely because it is novel or unusual provided it is comprehended by the principles underlying the law of Contempt of Court. The absence of precedent should' however put the court on guard that the area of contempt is not being unduly expanded (Vide 17 Corpus Juris Secundum

21). The present case then is to be decided on principles and analogy.

Contempt of Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a willful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into, disrepute. (Vide 17 Corpus furls Secundum pages 5 and 6; Contempt by Edward N. Dangel (1939 Edn.) page 14. Oswald's Contempt of Court (1910 Edn.) pages 5 and 6). It is a commonplace that where the superior court's order staying proceedings is disobeyed by the inferior court to whom it is addressed, the latter court commits contempt of court for it acts in disobedience to the authority of the former court. The act of disobedience is calculated to undermine public respect for the superior court and jeodardise the preservation of law and order. The appellant's case is to be examined in the

light of the foregoing principles and analogy.

The remark in the appellants order found objectionable by the High Court is this : "Further, against the order we have moved the Supreme Court, and as such the matter can be safely deemed to be subjudice." It may be observed that on the date of the order nothing was pending in the Supreme Court; only a petition was pending in the High Court for a certificate to appeal to the Supreme Court from the decision in Bhramarbar Santra. (1) The appellant has thus made a wrong statement of fact. Secondly, the use of .the personal pronoun "We" is also significant. It indicates that the appellant identified himself as a litigant in the case and did not observe due detachment and decorum as a quasi judicial authority. Lastly, we agree with the High Court that it is not possible to believe that the appellant could have entertained the view that as soon as a petition for certificate to appeal to the (1) I.L.R. 1970 Cuttack 54.

Supreme Court was filed in the High Court against its decision, the binding character of the decision disappeared. He has 23 years' judicial experience and he could scarcely entertain that belief. We agree with the High Court that the appellant deliberately avoided to follow its decision by giving wrong and illegitimate reasons and that his conduct was "clearly mala fide".

Under Art. 227 of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi judicial authority under the Orissa Hindu Religious Endowments Act, the appellant was subject to the superintendence of the High Court. Accordingly the decisions of the High Court were binding on him. He could not yet away from them by adducing factually wrong and illegitimate reasons. In East India Commercial Co. Ltd. Calcutta and Another v. The Collector of Customs, Calcutta(1) Subba Rao J. observed :

> "The Division Bench of the High court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under s. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215, 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. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court. making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of

law and respect for law would irretrievably suffer."

(1) [1963] 3 S.C R. 338 at 366.

The conduct of the appellant in not following the previous, decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. Ms conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and malafide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law 'and engender harassing uncertainty and confusion in the administration of law.

Our view that deliberate and malafide conduct of not follow- ing the binding precedent of the High Court is contumacious does not unduly enlarge the domain of contempt. It would not stifle a bona fide act of distinguishing the binding precedent, even though it may take out to be mistaken. As a result of the foregoing discussion, we think that the High Court has rightly found the appellant guilty of contempt. So we dismiss the appeal.

S.C. Appeal dismissed.