HIGH COURT OF GUJARAT

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Versus

BHUPATAJI BADARJI THAKARDA

Date of Decision: 25 October 2007

Citation: 2007 LawSuit(Guj) 2728

Hon'ble Judges: D N Patel

Case Type: Civil Miscellaneous Application; Second Appeal; Civil Application; Second Appeal; Civil Application; First Appeal; Civil Application; First Appeal; Civil Miscellaneous Application; Company Application; Civil Miscellaneous Application; Company Application

Case No: 2773 of 2007; 164 of 1990; 13536 of 2007; 36 of 1992; 13612 of 2007; 142 of 1988; 13616 of 2007; 1878 of 1984; 147 of 2007; 246 of 2006; 148 of 2007; 245 of 2006; 24 of 2007; 10 of 1999; 26 of 2007; 7 of 2005

Subject: Constitution

Acts Referred:
Constitution of India Art 146, Art 229

Advocates: J B Pardiwala, D R Bhatt, Suresh M Shah, Chirag M Pavar, R C Jani

Cases Referred in (+): 3

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[1] Rule. Learned Counsel Mr. D.R.Bhatt, Mr. S.M.Shah and Mr. Chirag Pawar, Mr. R.C.Jani, Mr. P.R.Nanavati and OL waive service of Rule on behalf of their respective respondents.

[2] The present application has been preferred for the following main prayer :

> ?SPara : 7(A) ?∟ Expunge the remarks, which are made in Paragraph No.5 in Second Appeal No.164 of 1990 vide order dated 9.11.2006, by the Hon'ble Court (Coram : R.S.Garg, J.), against the Administration/Registry of the High Court in the aforesaid matter which are reproduced in Para : 5 of this Application.??

[3] Learned counsel, appearing for the applicant, mainly submitted that the remarks made by the learned Single Judge in the Memo of Order in Para No.5 is unwarranted

and uncalled for looking to the facts of the case. No opportunity of hearing was given before passing the remarks, as stated in the impugned order.

[4] Learned Counsel, appearing for the applicant has relied upon the decision of the Hon'ble Supreme Court in the case of ?SK?? A JUDICIAL OFFICER, reported in (2001) 3 SCC 54, the decision of the Hon'ble Supreme Court in the case of P.K.DAVE v/s. PEOPLES' UNION OF CIVIL LIBERTIES (DELHI) AND OTHERS, reported in (1996) 4 SCC 262 and the decision of the Division Bench of this Court in the case of SUO MOTU v/s. S.J.GAEKWAD, REGISTRAR, GUJARAT HIGH COURT, reported in 2001 (1) GLR 752, and has submitted that in view of aforesaid decisions the remarks may be expunged, otherwise the powers under Article 229 of the Constitution of India would become nugatory.

[5] Having heard the learned Counsel, appearing for the applicant, and looking to the facts and circumstances of the case the remarks made in the impugned order 9th November, 2006, more particularly in Para : 5, which reads as under :

> ?S5..... ..... The said act of the Section Officer and the Deputy Section Officer is not only illegal, but, it tantamounts to assuming powers in themselves while they have none ... ... Let the Registrar General make an inquiry into the subject and submit his report to this Court on 21st November, 2006. After ascertaining the names of the Deputy Section Officer and the Section Officer, the Registrar General shall place a copy of this order in the service records of these two officers.??

[6] The aforesaid remarks were made without giving any opportunity of hearing, therefore, also it requires to be expunged. Likewise, in view of the decision (i) of the Hon'ble Supreme Court in the case of K.A.JUDICIAL OFFICER, reported in (2001) 3 SSC 54, Paragraphs : 8, 9, 12, 13 & 14, reads as under :

> Para : 8 :
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> ?SThe primary purpose of pronouncing a verdict is to dispose of the matter in controversy between the parties before it. A Judge is not expected to drift away from pronouncing upon the controversy, to sitting in judgment over the conduct of the judicial and quasi-judicial authorities whose decisions or orders are put in issue before him, and indulge in criticising and commenting thereon unless the conduct of an authority or subordinate functionary or anyone else than the parties comes of necessity under review and expression of opinion thereon going to the extent of commenting or criticising become necessary as a part of reasoning requisite for arriving at a conclusion necessary for deciding the main controversy or it becomes necessary to have animadverted thereon for the purpose of arriving at a decision

on an issue involved in the litigation. This applies with added force when the superiod court is hearing an appeal or revision against an order of a subordinate judicial officer and feels inclined to animadvert on him. The wisdom of a Superior Judge itching for making observations on a subordinate Judge before ventilating into expression must pause for a moment and read the counsel of Cardozo -

?Swrite an opinion, and read it a few years later when it is dissected in the briefs of counsel. You will learn for the first time the limitations of the power of speech, or, if not those of speech in general, at all events your own. All sorts of gaps and obstacles and impediments will obtrude themselves before your gaze, as pitilessly manifest as the hazards on a golf course. Sometimes you will know that the fault is truly yours, in which event you can only smite your breast, and pray for deliverance thereafter.??

Para : 9 :

?SThe courts do have power to express opinion, make observations and even offer criticism on the conduct of anyone coming within their gaze of judicial review but the question is one of impelling need, justification and propriety. The following observations by Sulaiman, J. in Panchanan Banerji v/s. Upendra Nath Bhattacharji was cited with approval before this court in Niranjan Patnaik v. Sashibhusan Kar.

?SThe High Court, as the Supreme court of revision, must be deemed to have power to see that courts below do not junjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it.??

Para : 12 :

?SThough the power to make remarks or observations is there but on being questioned, the exercise of power must withstand judicial scrutiny on the touchstone of following tests : (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. The overall test is that the criticism or observation must be judicial in nature and should test is that the criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve (see Mohd. Naim).

Para : 13 :

?SIt was so said by a Special Bench of three Judges presided over by Tek Chand, J. in Philip William Ravanshawae Hardless v. Gladya Isabet Hardless : (AIR Headnote)

?SA passage which is not necessary to the conclusion of the Judge nor even necessary to his argument and is likely to militate seriously against party's earning a living in his profession should be expunged from the judgment.??

Para : 14 :

?SIn A.M.Mathur v. Pramod Kumar Gupta this court sounded a note of caution emphasising a general principle of highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct and said : (SCC pp. 538-39, Para-13)

?S13. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraing, this humility of function should be constant theme of our Judges. This quality in decision-making is as much necessary for Judges to command respect as to protect the independence of the judiciary. 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 coordinate 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 Judges has failed in these qualities, it will be neither good for the Judge nor for the Judicial process.

(ii) Likewise in view of the decision of the Hon'ble Supreme Court in the case of P.K.DAVE v/s. PEOPLES' UNION OF CIVIL LIBERTIES (DELHI) AND OTHERS, reported in (1996) 4 SCC 262, it has been held in Para : 9, as under :

?S..... The power to expunge any remark made by a court in a judgment is an extraordinary power and can be exercised only when a clear case is made out. It is also a cardinal principle that a Judge should take special care in making disparaging remarks against a person or authority whose conduct comes in for consideration before him in any case to be decided by him and should not make any uncalled for remarks which would be against the judicial discipline. If the relief sought for can be given to the applicant without dubbing the conduct of the person concerned to be mala fide then the court should refrain from coming to any conclusion on mere assertions inasmuch as the allegations of mala fides have to be specifically made and would have to be established by the person who seeks relief on that ground. To avoid harsh words and intemperate language and to have self-

restraint is a part of judicial training of a Judge and, therefore, a Judge should be extremely careful while commenting upon the conduct of another individual particularly when the individual is not before the court. Bearing in mind the aforesaid principle we would now examine the strictures made by the court against the appellant Mr. Dave.??

(iii) Likewise, in view of the decision of the Division Bench of this Court in the case of SUO MOTU v/s. S.J.GAEKWAD, REGISTRAR, GUJARAT HIGH COURT, reported in 2001 (1) GLR 752, this Court in Para : 9.3 & 10 observed as under :

?S9.3 ?└ The power to intiate disciplinary proceedings against any officer or other staff member of the High Court, thus constitutionally lies within the exclusive domain of the Chief Jutice under Art. 229. The Constitution treats 'High Court' and 'Chief Justice' as two separate entities inasmuch as ?SControl over subordinate Courts?? vests in the High Court under art. 235, but the High Court administration vests in the Chief Justice under Art. 229. As held by the Supreme Court in M.Gurumoorthy v. A.G., reported in 1971 (2) SCC 137, Art. 229 contemplates full freedom to the Chief Justice of the High Court in the matter of appointments of officers and servants of the High Court. The unequivocal and obvious intention of the framers of the Constitution in enacting Art. 229 is that in the matters of such appointments, it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent provided in the Article itself. In the matter of appointments, even the Legislature cannot abridge or modify the powers conferred on the Chief Justice under Art. 229 (1). The power available to the Chief Justice of a High court under Art. 229 is akin to powers of the Chief Justice of India under Art. 146 of the Constitution as held by the Supreme court in High Court of Rajasthan v. R.C. Paliwal (supra). The Supreme court also held that, the Chief Justice has been vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother Judges who, however, can scrutinise his administrative action or order on the judicial side like the action of any other authority.??

Para : 10 ?└ Under Art. 229 of the Constitution, the Chief Justice may exercise the power himself or exercise it through such other Judge or officer (such as the Registrar) of the Court, as he may direct. Any direction to hold an inquiry against an officer or other member of the High Court, staff would therefore, essentially amount to exercise of powers under art. 229 and this can be done only by the Chief Justice or his Nominee. The power of the Chief Justice or his Nomnee to take disciplinary action against officers and servants of the High Court cannot be curtailed by any interference from any quarter, not even from his brother Judges.

Nor can there be a regular monitoring of any departmental action against an employee by the Court, because, that would amount to usurping the constitutional powers of the Chief Justice under Art. 229, resulting in judicial arm-twisting of the Chief Justice and would constitute a serious inroad in the exclusive administrative powers of the Chief Justice. The initiation, nature, progress and outcome of disciplinary action against any officer or other employee of the High Court are the sole preserve of the Chief Justice. No contempt action, can therefore, be taken by the Court against any officer or other employee of the High Court for any administrative lapse or inaction, for which a proper remedy would be of administrative reform by the Chief Justice or departmental action that may be taken by the Chief Justice in his wisdom under Art. 229 of the Constitution.??

[7] Thus, the power to initiate disciplinary proceedings against any officer or other staff members of the High Court, lies, constitutionally within the exclusive domain of the Chief Justice under Art. 229 of the Constitution. Any direction to hold an inquiry against an officer or other members of the High Court Staff, would amount to exercise of powers under Art. 229 of the Constitution and this can be done only by the Chief Justice or his Nominee.

[8] In view of aforesaid decision also, the remarks and order of inquiry made in the impugned order deserves to be quashed and set aside as the same is, looking to the facts of the case, are unwarranted and uncalled for and violative of Article 229 of the Constitution of India, therefore, also they are quashed.

[9] As a cumulative effect of the aforesaid facts and reasons and the judicial pronouncement the remarks made in the impugned order dated 9th November, 2006 in Second Appeal No.164 of 1990 with Civil Application No.3486 of 2003 made in Para : 5, as well as the impugned order dated 27.12.2006 in Second Appeal No.36 of 1992, impugned orders dated 22.8.2007 & 27.8.2007 in First Appeal No.142 of 1988, impugned order dated 29.8.2007 in First Appeal No.1884 of 1990, impugned order dated 5.9.2007 in First Appeal No.1718 of 1984 and in First Appeal No.1878 of 1984, impugned order dated 5.5.2006 in Company Application No.245 of 2006 & Company Application No.246 of 2006, impugned order dated 17.2.2006 in OJCR No.10 of 1999, impugned ordere dated 18.4.2006 in OLR 102/03 in COMP NO.338/97 and the impugned order dated 28.4.2006 in OJCR No.7/05, as stated herein above, are hereby expunged, likewise order of inquiry upon staff of High Court is also quashed as the same is violative of Art. 229 of Constitution of India.

[10] Rule made absolute in all the above matters to the aforesaid extent. No order as to costs.