PETITIONER:
DR.D.C. SAXENA

Vs.

RESPONDENT:
HON'BLE THE CHIEF JUSTICE OF INDIA

DATE OF JUDGMENT: 19/07/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SINGH N.P. (J)
BHARUCHA S.P. (J)

CITATION:
1996 SCC (7) 216 JT 1996 (6) 529
1996 SCALE (5)233

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

BHARUCHA, J.

I have had the advantage of reading the judgment and order proposed by my learned Brother, the Hon'ble Mr. Justice K. Ramaswamy. I agree with the order but, very respectfully, now set out my reasons therefor.

The alleged contemnor, Dr. D.C. Saxena, has filed a writ petition (C.W.P. No.432/95) in this Court in the public interest seeking to recover from the then Prime Minister, Mr. P.V. Narasimha Rao, expenditure incurred for the private use of Indian Air Force aircraft and helicopters and consequential reliefs. The alleged contemnor appeared in person when the writ petition was called out on 17th July, 1995, for admission before a Bench comprised of the Chief Justice of India, the Hon'ble Mr. Justice A.M. Ahmadi, and the Hon'ble Mr. Justice S.C. Sen. The Bench sent for the Solicitor General for India and directed him to verify the contents of the writ petition, which was ordered to be listed after two weeks. On 7th August, 1995, the writ petition was listed before a Bench comprised of the Chief Justice of India and S.C. Sen and K.S. Paripoornan, JJ. The Solicitor General placed the original record before the Court and, after perusing the same and hearing the alleged contemnor, the writ petition was summarily dismissed.

The alleged contemnor filed a second writ petition (No.D17209/95) making the Chief Justice of India the respondent thereto. He prayed that it be declared that the respondent was unfit to hold the office Chief Justice of India; that the respondent be stripped of his citizenship; that an F.I.R. be registered against the respondent for committing forgery and fraud; for a direction that the respondent be prosecuted under the Prevention of Corruption Act, and for other reliefs. The alleged contemnor submitted that it was improper for the respondent to have heard the

earlier writ petition and that the respondent had attempted but failed to browbeat the alleged contemnor; the dismissal of the earlier writ petition without recording the reasons therefor invited the commit, "So much for the vaunted adherence to the twin principles of transparency and accountability". The ground for the relief which the alleged contemnor sought, inter alia, were:

> -"for causing fabrication of court proceedings 7th August, 1995....."
> -"for wilfully and advertently violating the fundamental rights of not only the petitioner as an individual, but that of the people of India....."
> -"for violation of the sacred oath of office by the respondent:;
> -"for deliberate and wilful failure to perform fundamental duties and stultifying their performance by the petitioner"; and
> -"for allowing his son who is practising in the Supreme Court to stay with him in his official residence, and presumably misusing official facilities and prestige of office of Chief Justice of India."

The alleged contemnor added that during the pendency of the writ petition, the respondent "may be advised to proceed on leave, so that he may not directly or indirectly influence any of the judges hearing the matter".

The second writ petition came up for admission before a Bench comprised of Verma, J. and two of us (N.P. Singh and S.P. Bharucha, JJ). After hearing the alleged contemnor, the second writ petition was dismissed, the following order being passed :

> "The several averments in the writ petition are scandalous and it is surprising that the petitioner, who is, said to be a Professor in a University, has chosen to draft and file such a writ petition. His understanding of the meaning of Article 32 of the Constitution, is to say the least, preposterous. The allegations made are reckless and disclose irresponsibility on the part of the petitioner. This writ petition is wholly misconceived and is an abuse of he process of the Court. The petition has no merit.
> The writ petition is, therefore, dismissed.
> In view of the attitude of the petitioner even at the hearing, when he persisted in this stand and, on our asking him, reiterated that he stood by the scandalous averment made therein consider it our duty to issue to the petitioner a notice to show cause why proceedings to punish him for contempt of this Court should not be initiated against him. The Registry to take the necessary

steps for registering the matter as a contempt petition. The petitioner who is present in person is given notice of the contempt petition. He is required to file his reply within four weeks to show cause why proceedings for contempt should not be initiated against him. We request the learned Solicitor General to assist the Court in this contempt matter.

List the matter after notice of the date filed by Registry is given to Dr. D.C. Saxena and the Solicitor General."

Pursuant to the order the alleged contemnor was served with a contempt notice, which drew his attention to the following contents of the second writ petition:

i) Page 4 Para-9

"... it was improper for Justice Ahmadi to hear it."

ii) Page 5 Para-10

"That Justice Ahmadi's utmost reluctance to perform his fundamental- duties and constitutional obligations was apparent, when after failing to browbeat the petitioner,..... "

iii) Page 6 Para-14

"..... To this Justice Ahmadi responded that he (the Solicitor General) was there to assist the Court, contrary to the evidence of the Court proceedings.

iv) Page 6 Para-15

"..... and without recording reasons for dismissing the petition. So much for the vaunted adherence to the twin principles of transparency and accountability."

v) Page 6 Para-17

"..... The course of action by Justice Ahmadi, in dealing with the grouse of the petitioner and dismissing his petition, is totally unjust, unfair, arbitrary and unlawful. It is in flagrant violation of the mandates of Article 14 of the Constitution, which. "runs like a golden thread" through it and is the foundation of justice and fair play..... "

vi) Page 7 Para-18(c)

"For causing fabrication of court proceedings of 7 August, 1995, and not mentioning the fact of appearance of the Solicitor General, would Justice Ahmadi not be liable to prosecution under the relevant provisions of the Indian Penal Code, in consonance with the time-honoured maxim, "Be you ever

so high, the law is above you?"
vii) Page 7 Para-18(d)
"Can Justice Ahmadi be allowed to take shelter behind the cloak of judicial immunity, in the facts and circumstances of the instant case, particularly when unlike the President of India, who cannot be impleaded in civil or criminal proceedings" during
xi> Page 8 Para-18(h)
"For allowing his son who is practising in the Supreme Court, to stay with him in his official residence, and presumably misusing official facilities and prestige of office of Chief Justice of India, is not Justice Ahmadi liable to be prosecuted under the Prevention of Corruption Act, in view of the ratio decidendi of Veeraswami's case?"
xii) Page 8 Para-18(i)
"Is Justice Ahmadi not liable to pay from his pocket not only the legitimate costs incurred by the petitioner in C.W.P. No.432 of 1995 and the present petition, but also the loss caused to the public exchequer by non-payment of dues with 18% interest by Shri P.V.N. Rao?"
xiii) Page 8 7th line from the bottom
"..... excluding any Judge who owes his elevation to the apex Court to Justice Ahmadi. Further, during its pendency. Justice Ahmadi may be advised to proceed on leave, so that he may not directly or indirectly influence any of the Judges hearing the matter."
his term of office," he enjoys no such constitutional protection?
viii) Page 7 Para-18(e)
"For wilfully and advertently violating the fundamental rights of not only the petitioner as an individual, but that of the people of India, who are ultimately sovereign, as stated in the Preamble to the Constitution, has not Justice Ahmadi forefeited any legal protection, even it if were available to him?"
ix) Page 8 Para-18(f)
"What are the legal consequences of the violation of the sacred oath of office by Justice Ahmadi?"
x) Page 8 Para-18(g)
"For deliberate and wilful failure to perform his fundamental duties and stultifying their performance by the petitioner, should not Justice Ahmadi be stripped of his

citizenship, because duties alone can confer the corresponding legal and constitutional rights?"

xiv) Page 9 Prayer

(a) Declare the respondent unfit to hold office as Chief Justice of India;

(b) Strip the respondent of his citizenship;

(c) Direct the registration of an F.I.R. against the respondent under the Indian Penal Code for committing forgery and fraud;

(d) Direct the respondent's prosecution under the Prevention of Corruption Act.

The alleged contemnor filed written submissions in reply to the contempt notice. His first submission was that the Bench which had heard and dismissed the second writ petition had been constituted by the respondent, who had thereby become a judge in his own cause. The second writ petition was, accordingly, not listed before a court competent to dispose it of, so that the order of its dismissal was non est, and it was still deemed to be pending. The contempt notice was, therefore, premature. The written submissions then dealt with the portions of the second writ petitions which had been indicated in the contempt notice and reiterated the same, except only that it was submitted that the allegation about fabrication of the court proceedings of 7th August, 1995, was "somewhat unhappily worded". It was submitted thereafter that the Contempt of Courts Act was a legacy of British imperialism and, while appropriate to a "banana republic", was incompatible with a democratic, people's polity; it was a law-less law because it fused the offices of the prosecutor and the judge and "belongs with the infamous Spanish Inquisition". After his signature at the foot of the written submissions, the alleged contemnor added in hand, "N.B. If some passages seem strident or pungent, the defendant is willing to suitably modify them."

The contempt notice came up before this Bench on 15th April, 1996. The following order was then passed:

"Pursuant to the notice issued by this Court the Contemnor Dr. D.C. Saxena is present today in person. He has stated that he would modify the offending portions noted in the show cause notice in Item (ii), (iv), (vi), (vii), (viii), (x), (xii), (xiii) and wishes to withdraw unconditionally item xiv, paras B and C.

The learned Solicitor General has pointed out that even if the Contemnor withdraws or files statement in the modified form what the Court required to do is whether his statements made in the writ petition originally filed constitute contempt of the Court or not and his modification of the above statements would not be of material reliance for consideration. Since the contemnor seeks time to submit the show cause

in the modified language which he wishes to place before the Court, at his request the matter is adjourned to May 2, 1996 at 2.00 p.m. The Registry is directed to supply complete set of papers to learned Solicitor General."

Pursuant to this order the alleged contemnor submitted a statement of modifications. In regard to Item (ii) of the contempt notice, the amended version read :

"The petitioner discerned reluctance on the part of the presiding judge to allow the relief claimed, which was in public interest, and actuated by the desire to "preserve and protect public property," without any personal malice."

In respect of Item (iv), it read :

"That Justice Ahmadi ultimately dismissed the petition, observing that the Government of India was capable of realising the dues from Shri Rao (which it had not done in two years) and without recording the reasons for dismissing the petition, for which lapse it has often berated High Courts, in pursuance of the twin principles of transparency and accountability."

In respect of Item (vi), it read:

"For inaccurate recording of the court proceedings of 7 August, 1995, and not mentioning even the fact of appearance of the Solicitor General for the respondents, what responsibility would ensue on the presiding judge, who dictated them?"

In respect of item (vii), it read :

"When under the Constitution, judges of superior courts do not, unlike the President of India, enjoy total immunity during their term of office, can the presiding judge be allowed to make such a claim for wrong-doing?"

In respect of item (viii), it read :

"For violating the fundamental rights of not only the petitioner, as an individual, but also that of the people of India, who are ultimately sovereign, as stated in the preamble to the Constitution, has not Justice Ahmadi sent wrong signals to the entire judiciary, of which he is the head?"

In respect of item (x), it read :

"For failure to perform his fundamental duties and impeding their performance by the petitioner, should not Justice Ahmadi be regarded as accountable to the people of India, because

duties alone can confer the corresponding legal and constitutional rights?"

In respect of item (xii), it read : "Who would be liable to reimburse the legitimate costs incurred by the petitioner in C.W.P. No.432 of 1995, and the present petition, and the huge loss caused to the public exchequer, because of persistent default in paying them, by Shri P.V. Narasimha Rao, with 18% interest?"

In respect of item (xiv), it read : "(Prayers) (b) and (c) may kindly be treated as deleted."

The matter was heard on 2nd May, 1996. The Solicitor General, appearing amicus curiae, suggested at the outset that the alleged contemnor would be advised to take legal counsel before proceeding further. but the suggestion was not heeded. The Solicitor General drew our attention to what has been set out above. He submitted that the averments in the second writ petition were made and remained on the record; they were ex-facie contumacious. The alleged contemnor had sought to delete some of these averments and modify some others but had expressed no regret for what he had already said. Even the modified averments were contumacious.

The alleged contemnor submitted that he had the greatest respect for this Court and that he had expressed the same in his reply to the contempt notice. The modifications that he had made indicated his own fallibility, for he had used exaggerated language in the second writ petition. He submitted that the certified copy of the first order in the earlier writ petitions did not indicate that the Solicitor General had appeared amicus curiae. He drew attention to the judgment of this Court in C.Ravichandran Iyer vs. Justice A.M. Bhattacharjee & Ors., 1995 (5) S.C.C. 457, in support of his submission that the respondent to the second writ petition was liable to be prosecuted under the Prevention of Corruption act for allowing his son "who is practising in the Supreme Court, to stay with him in his official residence, and presumably misusing official facilities and prestige of office of Chief Justice of India". He said that the factual basis for this submission were articles in a newspaper and a news magazine. He submitted that he had acted for the public good and that Sections 4 & 5 of the Contempt of Courts Act applied. He also contended that the Contempt of Courts Act was violative of the Constitution, but did not enlarge upon the contention.

Article 129 of the Constitution of India provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to commit for contempt of itself. Any act done or writing published which is calculated to bring a court or a judge into contempt or to lower his authority or to interfere with the due course of justice is a contempt of the court: scurrilous abuse of a judge or court, or attacks on the personal character of a judge are acts of contempt. (See R. Vs. Grey, (1900) 2 Q.B. 36). "The object of the discipline enforced by the court in the case of contempt of court is not to vindicate the dignity of the court or person of the judge, but to prevent undue interference with the administration of justice". (Helmore Vs. Smith, (1886) 35

Ch. D. 449). This is not to say that judicial decisions may not be subjected to criticism; they can, but not the judges who took them. Lord Atkin in Ambard vs. A.G. for Trinidad and Tobago, (1936) A.C. 322, said: "The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." In Re. A.G. of Canada and Alexander et al, (1976) 65 D.L.R. (3rd) 608, a newspaper was held by the Supreme Court of the Northwest Territories of Canada to have committed contempt for alleging a "cover-up" by court officials, participated in by a Supreme Court judge, to shield a public figure from adverse publicity. In New Zealand a solicitor was held by the Court of Appeal to have committed contempt for alleging that in a previous case judges had been guilty of forgery, fabrication of evidence and partiality; in the court's opinion, "there could not be a clear case of a serious contempt of court..... " (Re.Wiseman, (1969) NZLR 55). The contempt jurisdiction is not, therefore, to be found in "banana republics" but in democracies that abide by the rule of law. It is intended to uphold the authority and dignity of the courts of law which, on behalf of the State, deliver Justice and protect the public confidence that is reposed in them.

The contempt notice to the alleged contemnor pursuant to the order of dismissal of the second writ petition was issued in exercise of the power of this Court, recognised by Article 129 of the Constitution, to punish for contempt of itself. The issue of the constitutionality of the Contempt of Courts Act is, therefore, not germane.

The earlier writ petition came up for admission on 17th July, 1995. The Solicitor General was, admittedly, called by the Bench and asked to look into the papers. The minutes show the Solicitor General as having appeared "for the respondent". Since the Solicitor General appeared on being called by the Bench, plainly, he could not have appeared "for the respondent." His appearance was wrongly recorded.

The matter was listed again on 7th August 1995. On that occasion the appearance of the Solicitor General was not shown in the minutes, but, admittedly, he appeared and showed to the Bench the original record. After seeing it and hearing the alleged contemnor, the earlier writ petition was dismissed. According to second writ petition, the alleged contemnor asked the Bench "whom the Solicitor General was representing, since he could not appear for a private party, namely, the President of the Congress Party. To this Justice Ahmadi responded that he was there to assist the court contrary to the evidence of the court proceedings." Upon this basis the alleged contemnor stated in the second writ petition that the respondent (the Chief Justice of India) had caused "fabrication of court proceedings on 7th August, 1995 and was, therefore, liable to prosecution under the relevant provisions of the Indian Penal Code." The relevant prayer of the second writ petition was that an F.I.R. be registered against the respondent under the Indian Penal Code for committing "forgery and fraud". The alleged contemnor, who is, I understand, a Professor of English, could have had no doubt of the grave import of the words 'fabrication', 'forgery' and 'fraud'. He also knew them to be offences under the Indian Penal Code". The modification

made by the alleged contemnor of the averments in this regard is that the respondent was responsible for "inaccurate recording of the proceedings of 7th August, 1995," and the prayer is sought to be deleted. The modification does not speak of inadvertant inaccurate recording or express any regret for the allegations of fabrication, forgery and fraud. The allegation of inaccurate recording, as made, suggests that such recording was deliberate and there is, therefore, no more than some moderation of language. The allegations of fabrication, forgery, fraud and inaccurate recording of proceedings are made in respect of a judge in the performance of his judicial function. They are of a most serious character. They are intended to lower the authority of and respect for the court and the office of the judge.

Upon the same facts there are allegations in the second writ petition that the respondent violated his oath of office and failed to perform his fundamental duties. The summary dismissal of a writ petition by a judge is not a violation of his oath or fundamental duties; at worst, it might be a judicial error. The dismissal of a writ petition cannot warrant the charge of violation of his oath by a Judge; and, in my book, no more serious charge against a judge can be made. What the alleged contemnor conveniently does not mention account is that the three learned judges (including the respondent) who constituted the Bench found no merit in the earlier writ petition and dismissed it. The suggestion of the alleged contemnor in paragraph 15 of the second writ petition that the earlier writ petition was dismissed by the respondent suggests that the other two judges counted for nothing, and this is also contempt. The allegations are scurrilous and scandalise the court.

It is the duty of the Chief Justice of a court to assign judicial work to his brother judges. It was, therefore, the duty of the respondent to assign the second writ petition to a bench to hear it. By doing so he did not, as is alleged, become a judge in his own cause. It is contempt to imply, as the alleged contemnor does, that the respondent would assign it to a bench which would not pass an order adverse to him. It is also contempt to imply that judges would be so amenable. To plead that the Bench that heard the second writ petition could not have heard it and, therefore, could not have dismissed it and that it is deemed to be still pending is to add to the contempt. These allegations are also aimed at bringing the administration of justice into disrepute.

The second writ petition alleged that the respondent had allowed "his son, who is practising in the Supreme Court, to stay with him in his official residence and presumably mis-using official facilities and prestige of office of Chief Justice of India" and sought his prosecution under the Prevention of Corruption Act. The allegation and prayer are not sought to be modified. The allegation is not in any way connected with the dismissal of the earlier writ petition. It is brought in for no reason other than to vilify the respondent in connection with his official duties and position. How irresponsible the allegation is shown by the fact that, according to the alleged contemnor himself, it is based only upon what he read in articles in a newspaper and a news magazine.

I have dealt with what seem to me to be the principal contempts; I agree broadly with the discussion by brother Ramaswamy, J. of the other allegations made by the alleged contemnor.

The alleged contemnor has sought the protection of

Sections 4 and 5 of the Contempt of Courts Act. What he has written in the second writ petition is neither a fair and accurate report of the proceedings of the earlier writ petition nor a fair criticism thereof. The principle underlying these provisions is, therefore, not applicable.

For the reasons aforesaid, I find the alleged contemnor to be in contempt.

Having regard to the gravity of the contumacious statements, the recklessness with which they are made, the intemperateness of their language, the mode of their publication in a writ petition in this court and the alleged contemnor's influential position in society, I do not think that punishment only in the nature of a fine would be adequate. A contemnor such as the present must also undergo imprisonment.

Accordingly, the alleged contemnor is convicted for contempt and sentenced to undergo simple imprisonment for a period of three months and to pay a fine in the sum of Rs.2,000/- (Rupees two thousand). In default of such payment within three months, the alleged contemnor shall undergo further simple imprisonment for a period of one month.