

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1679 of 2013

- Smt. Kalpana Majumdar W/o Shri K. B. Majumdar Aged About 68 Years Advocate, R/o 8 Lal Bagh, Rajnandgaon, PS & Tahsil Rajnandgaon, Cg

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Law And Legislatiure, Mahanadi Bhawan, Mantralaya, Naya Raipur, Raipur, Cg
2. Chairman Industrial Court, Raipur, Cg
3. Presiding Officer Labour Court, Rajnandgaon, Tahsil & Distt Rajnandgaon, Cg
4. Smt. Shashi Soni W/o Narendra Soni Labour Judge, Rajnandgaon, Presently Posted As Labour Judge, Janjgir, Tahsil & Distt Janjgir Champa, Cg
5. Collector Rajnandgaon, Rajnandgaon, Cg

---- Respondent

And

WPC No. 1680 Of 2013

- Smt. Kalpana Majumdar W/o Shri K.B. Majumdar Aged About 68 Years Advocate, R/o 8 Lal Bagh, Rajnandgaon, P.S. & Tahsil Rajnandgaon C.G.

---- Petitioner

Vs

1. State Of Chhattisgarh Through - Secretary, Department Of Law & Legislature, Mahanadi Bhawan, Mantralaya Naya Raipur, Raipur C.G.
2. Chairman Industrial Court Raipur C.G.
3. Presiding Officer Labour Court, Rajnandgaon, Tahsil & Distt. Rajnandgaon C.G.

4. Smt. Shashi Soni W/o Narendra Soni Labour Judge, Rajnandgaon, Presently Posted As Labour Judge Janjgir Tahsil & Distt. Janjgir Champa C.G.
5. Collector Rajnandgaon, Rajnandgaon C.G.

---- Respondent

For Petitioner : Shri Basant Dewangan, Advocate.
For Respondent/State : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

01/08/2016

1. The present writ petitions have been preferred seeking expunging of adverse comments made by the Presiding Officer of Labour Court, Rajnandgaon to the effect that the petitioner has made interpolation or addition in the Vakalatnama to add the names of other lawyers namely, Prakash Mishra and Pundlik Patil, which amounts to criminal offence and the petitioner also deserves to be dealt with by the State Bar Council. It has also been commented that because of the act of the petitioner, the State Government is suffering irreparable loss.
2. It is argued that observations have been made in course of hearing of the main proceeding and no separate notice or opportunity of hearing was afforded intimating the petitioner that the Presiding Officer is desirous to take up the issue to examine the petitioner's conduct. It is also argued that there is no evidence that the petitioner has made addition by inserting the names of two other lawyers in the

Vakalatnama.

3. Learned State Counsel would support the impugned order. However, he would not dispute that on the relevant date when the adverse observations have been made, the matter was not finally disposed of nor a separate notice was issued to the petitioner for explaining her conduct.
4. Having heard learned counsel for the parties, it would clearly appear that while taking up the matter under the ID Act, the Labour Court has devoted the entire order sheet on the conduct of the counsel leaving behind the main matter in issue. No separate notice was ever issued to the petitioner nor order sheet reflects that any opportunity was granted to the petitioner even during the course of the day when the order sheet was written, to explain the conduct. Ordinarily, the lawyer engaged by the statutory body or even in cases where a lawyer appears for the State, the names of several assisting counsel are mentioned in the Vakalatnama so that as and when occasion arises, to protect the interest of the body who is represented by the counsel, the matter is attended in the Court. When assisting counsel appears either separately or along with senior counsel, it is with bonafide to assist the Court and not to cause hindrance in the administration of justice or to adversely affect the interest of the client.
5. Similarly, the Presiding Officer of the Labour Court could not have concluded the issue of subsequent addition of the names of Prakash

Mishra and Pundlik Patil in the Vakalatnama without verifying the same from the concerned dealing clerk who keeps the record. The order sheet does not reflect that even the dealing clerk who keeps the record has stated before the Court that it is the petitioner who has inserted the names at subsequent point of time. True it is that the Presiding Officer was dealing with the record, therefore, there might be recollection in the mind of the Presiding Officer that the names of those lawyers were not mentioned, however, nothing to that effect about the personal knowledge of the state of record in re Vakalatnama has been mentioned in the impugned order.

6. In the matter of '**K**' a **Judicial Officer**, {AIR 2001 SC 972}, the Supreme Court, while dealing with similar issue concerning expunction of adverse remarks, has laid down the principles as to when adverse remarks should be made and the principle governing exercise of the said power. The following has been held in paras-8, 9 and 11:-

“8. The 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 into 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 becomes 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 superior 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 - "Write 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." (Essays on Jurisprudence, Columbia Law Review, 1963 at p. 315).

9. The Courts do have power to express opinion, make observations and even offer criticism on the conduct of the anyone coming within their gaze of judicial review but the question is one of impelling need, justification and propriety. The following observation by Sulaiman, J. in *Panchanan Banerji v. Upendra Nath Bhattacharji*, AIR 1927 All 193 : (1928 (27) Cri LJ 1407) was cited with approval before this Court in *Niranjan Patnaik v. Sashibhusan Kar*, (1986) 2 SCC 569 : (AIR 1986 SC 819 : 1986 Cri LJ 911) (Paras 22, 23 and 24) :-

"The High Court, as the Supreme Court of revision, must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it."

This Court went on to add :-

"It is, therefore, settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Court of law unless it is really necessary for the decision of the case, as an integral part thereof to animadvert on that conduct. We hold that the adverse remarks made against the appellant were neither justified nor called for."

Having regard to the limited controversy in the appeal to the High Court and the hearsay nature of evidence of the appellant it was not at all necessary for the Appellate Judge to have animadverted on the conduct of the appellant for the purpose of allowing the appeal of the first respondent. Even assuming that a serious evaluation of the evidence of the appellant was really called for in the appeal the remarks of the learned Appellate Judge should be in conformity with the settled practice of Courts to observe sobriety, moderation and reserve. We need only remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be."

11. Though 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 not formally depart from sobriety, moderation and reserve (See Mohammad Naim (supra))."

In the same judgment (supra), the Supreme Court has quoted an earlier judgment in the matter of **Philip William Ravanshawe Hardless Vs. Gladys Isabel Hardless** {AIR 1940 Lahore 82} wherein adverse comments were made against a lawyer. It was observed in para-12 thus:-

“xxx	xxx	xxx
xxx	xxx	xxx

“A 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.”

(Emphasis supplied)

7. It is thus fairly settled that adverse remarks should be made only where it is necessary for the decision of the case, as an integral part thereof and that the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself and after considering as to whether there is evidence on record bearing on that conduct justifying the remarks.
8. In the case at hand, the matter was posted before the Labour Court on 12.6.2013 when one Prakash Mishra, Advocate, moved an application to allow him to appear for the DFO, Kawardha, to which the other party objected that his name was not included in the original Vakalatnama but was subsequently inserted along with another counsel namely, Pundlik Patil, which amounts to making interpolation in the record for which cognizance should be taken. On this date, the petitioner was not present in the Court. The Labour Court posted the application for orders on 20.6.2013.
9. The order sheet of 20.6.2013 records that Prakash Mishra, Advocate, admitted that he inserted the name on the request of the petitioner. On this, the Court concluded that the petitioner has made interpolation in the record without the leave of the Court. The matter was then posted for 28.6.2013 and on the said date Prakash Mishra, Advocate, did not appear, therefore, his application seeking permission to appear in the

case was rejected and the matter was posted on 12.7.2013. On this date, the petitioner was not present and yet the Labour Court passed the order to hold that the petitioner has committed the offence. It was also observed that the petitioner does not deserve to be appointed as Panel Lawyer for the State and she should immediately be removed from the Panel because she is colluding with litigants to cause loss to the Government.

10. The order sheets are self explanatory and it does not need any further evidence that the order has been passed in the absence of the petitioner, without giving any notice to her of the intended observations/action /recommendation against her. It is informed that the petitioner is a lawyer having standing of 32 years at the Bar and there is no previous allegation or record of any such behaviour committed by the petitioner in the past. It is also informed that in some other proceeding pending before the Presiding Officer, the DFO was summoned and the said DFO failed to appear on 20.6.2013 when the present impugned order has been passed. It is the stand of learned counsel for the petitioner that the Presiding Officer was probably annoyed with the Government Advocate because the Government Advocate could not make it possible to ensure appearance of the DFO.

11. In view of the law laid down by the Supreme Court in 'K' a Judicial Officer (Supra), it appears clearly like a noon day that the observations were not necessary for reaching to a decision in the case nor any prior

notice was issued to the petitioner before making observations. Moreover, it is not stated in the order as to what loss has been suffered by the State in the case at hand or in any other case wherein the petitioner has appeared to defend the State.

12. Considering the entire fact situation of the case, it appears that the petitioner might not have any intention to interpolate the names of the lawyers. In any case, issuing direction to lodge FIR against the Government Counsel is not only too harsh but should have been avoided by the Presiding Officer or for that matter by any Court.

13. Accordingly, the impugned order deserves to be and is hereby set aside. Resultantly all actions pursuant thereto are also set aside.

14. The Writ Petitions are allowed to the extent indicated above.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve