

6 09.06.2022

gd/ssd
PA(RB)

MAT/605/2022
IA NO: CAN/1/2022
INOX AIR PRODUCTS PRIVATE LIMITED
VS
PRAXAIR INDIA PRIVATE LIMITED AND ORS.

Mr. S.N. Mookherjee,
Mr. Ratnanko Banerji,
Mr. Shounak Mitra,
Mr. Zulfiqar Ali Al-Quaderi,
Ms. Prerona Banerjee
..for the Appellant.

Mr. Jayanta Mitra,
Mr. Sayak Chakraborti
..for the Respondent No.1.

Mr. Bipul Kumar Mondal
..for the Union of India

Mr. L.K. Gupta,
Mr. Arjun Roy Mukherjee,
Ms. Debapriya Mitra
..for SAIL.

Mr. Kishore Datta,
Mr. Neelesh Choudhury,
Ms. Anuradha Poddar,
Ms. V. Sahni
..for the Respondent No.8.

This appeal is directed against the order of the learned Single Judge dated 15.03.2022 passed in WPA 21351 of 2021. There is another appeal being MAT 588 of 2022 which is filed by one of the parties in the writ petition.

Counsel for all the parties in that appeal as also in this appeal have jointly submitted that this appeal can be separately decided as the judgment of

the learned Single Judge is not under challenge on merit in this appeal.

Learned counsel for the appellant has advanced a limited submission that the observations have been made against the appellant in paragraphs 43 to 45 of the impugned judgment and the appellant was not a party in the proceedings before the learned Single Judge. Therefore, those observations could not be made and even otherwise those observations were not necessary for deciding the controversy and in support of his submission he has placed reliance upon the judgment of Hon'ble Supreme Court in the matter of ***State of U.P. v Mohammad Naim*** reported in ***AIR 1964 SC 703*** as also in the matter of ***Neeraj Garg v Sarita Rani and Others*** reported in ***(2021) 9 SCC 92***.

Learned counsel for the respondent/Steel Authority of India Limited has submitted that he has no objection if the observations made by the learned Single Judge against the appellant are expunged.

Learned counsel for the respondent no.8 has also no objection if the observations are expunged.

Having heard the learned Counsel for the parties and on the perusal of the record, it is

noticed that the respondent no. 1 herein (writ petitioner) had filed the petition raising a challenge to the tender process for setting up of a Cryogenic Oxygen manufacturing facility. In that writ petition, the appellant was not a party. Learned Single Judge has noted that the appellant had initially showed interest. The criterion was subsequently relaxed. The appellant had remained in the fray until September, 2021 but on the date of change of eligibility criteria, i.e., 24th of September, 2021, appellant had not submitted the bid. Learned Single Judge had examined the issue raised by the respondent no. 1 in the writ petition on merit and has dismissed the writ petition but while dismissing the writ petition, in paragraphs 43-45 of the judgment, certain adverse observations have been made against the appellant.

Having examined the record, we find that those observations were not necessary for deciding the writ petition and that the observations have been made without giving any opportunity of hearing. It has been pointed out by learned Counsel for the appellant that these observations will cause prejudice to the appellant in other contract of the appellant in future.

Hon'ble Supreme Court in the matter of

Neeraj Garg (supra), where the unnecessary remarks on the conduct of a Counsel having no bearing on the adjudication of dispute were made, has taken note of the legal position and earlier judgments on the issue and has held as under:-

“9. To press home the argument that the offending remarks against the counsel are unmerited, and do not meet the required parameters, the learned Senior Counsel has cited *State of U.P. v. Mohd. Naim* where S.K. Das, J. laid down the following tests to be applied while dealing with the question of expunction of disparaging remarks against a person whose conduct comes in for consideration before a court of law. Those tests are : (AIR p. 707, para 10)

10. ... (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.

10. In *Alok Kumar Roy v. S.N. Sarma*, in the opinion written by C.K. Wanchoo, J. for a five-Judge Bench, this Court had emphasised that even in cases of justified criticism, the language employed must be of utmost restraint. The use of carping language to disapprove of the conduct of the counsel would not be an act of sobriety, moderation or restraint.

11. The judgment of this Court in *A.M. Mathur v. Pramod Kumar Gupta*, delivered by K. Jagannatha Shetty, J., elaborates on the need to avoid even the appearance of bitterness. The Court observed that : (SCC pp. 538-39, para 13)

“13. ... The duty of restraint, 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 be better called judicial respect, that is, respect by the judiciary.”

12. The importance of avoiding unsavoury remarks in judicial orders as per established norms of judicial propriety has also been succinctly noted in *Abani Kanta Ray v. State of Orissa* by J.S. Verma, J. in the following words : (SCC p. 178, para 15)

“15. ... Use of intemperate language or making disparaging remarks against anyone unless that be the requirement for deciding the case, is inconsistent with judicial behaviour. Written words in judicial orders are for permanent record which make it even more necessary to practice self-restraint in exercise of judicial power while making written orders.”

13. The principles laid down as above, have been quoted with approval and applied by this Court in several subsequent judgments, including for a three-Judge Bench in *Samya Sett v. Shambhu Sarkar*. In this case C.K. Thakker, J. writing for the Court opined that the adverse remarks recorded were neither necessary for deciding the controversy raised before the Court nor an integral part of the judgment, and accordingly directed deletion of those remarks.

14. The proposition of law laid down by S.K. Das, J. on behalf of the four-Judge Bench in *Mohd. Naim* on recording of adverse remarks has been approved in a catena of decisions since 1964. It was also cited by the Supreme Court of Sri Lanka in *A.N. Perera v. D.L.H. Perera* where Abdul Kadir, J. speaking for the Bench approved of the tests laid down by this Court and concluded that the Judge's comments against the petitioner in that case were thoroughly unwarranted under each of those tests.

15. While it is of fundamental importance in the realm of administration of justice to

allow the Judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the Judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the court.

16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the counsel, without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.

17. The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the Court judgments, it will be a cross that the appellant will have to bear, all his life. To allow him to suffer thus, would in our view be prejudicial and unjust.

18. In view of the foregoing, we are of the considered opinion that the offending remarks recorded by the learned Judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. We therefore order expunction of the extracted remarks in paras 4, 5, 6 and 7 of

this judgment. The appeals are accordingly disposed of with this order.”

In the present case also, undisputedly similar situation exist. Additionally, it is also worth noting that none of the parties before this Court has opposed the prayer of the appellant for expunction of the adverse observations. Hence, the appeal is allowed and the observations made by the learned Single Judge in paragraphs 43 to 45 of the impugned order which are adverse to the appellant are hereby expunged.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]