2021 INSC 690

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION(CIVIL) No.734/2020

YATIN NARENDRA OZA **… Petitioner**

Versus

HIGH COURT OF GUJARAT **… Respondent**

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. One more chance after the last chance. That appears to be what is sought to be urged on behalf of the petitioner, Mr. Yatin Narendra Oza - counsel with many years standing, President of the Bar Association of the High Court of Gujarat on many occasions, and an erstwhile designated Senior Advocate. The privilege of the Senior's gown has been withdrawn unanimously by a Full Bench of the Gujarat High Court and that is what is sought to be assailed in the present petition under Article 32 of the Constitution of India.

2. This is not the petitioner's first run in with the High Court or for that matter the Supreme Court. The problem appears to be that the

petitioner does not seem to keep a balance between his role as a senior counsel and as President of the Bar Association and, thus, crosses the *Lakshman Rekha* repeatedly. In the written note filed on behalf of the Gujarat High Court (for short 'High Court'), it has been pointed out that he made certain utterances in 2006 against two named Judges, casting aspersions on their faith and their allegiance to the Constitution of India and the laws; claiming that they had instead mortgaged the same with the political powers that be at that time. This resulted in the issuance of a notice of contempt on 27.4.2006 and his role was commented upon in the earlier orders dated 30.8.2006 and 12.10.2006. Though they were finally expunged by this Court, seeking to give a long rope to the petitioner. The petitioner's apology was accepted with an undertaking, which was reported in *Yatin Narendra Oza* v. *Khemchand Rajaram Koshti and Ors*.[1]

3. On 21.03.2020, the petitioner wrote a letter to the Hon'ble Chief Justice of India making serious allegations against a senior-most Judge of the High Court in his capacity as President of the Bar Association. The petitioner then transgressed all limits by circulating the letter in the Bar Association's WhatsApp group on 8.6.2020, three days after calling the High Court a "Gamblers Den". The WhatsApp messages were circulated

1 (2016) 15 SCC 236

by holding a Press Conference 05.06.2020 (“**Press Conference**”), thereby making allegations of impropriety against the Institution of the High Court itself.

4. Dual proceedings arose against the petitioner – one of contempt and the other of a notice as to why the privilege of the gown should not be withdrawn. It is the say of the petitioner that he submitted an apology at the threshold in both these proceedings. Be that as it may, the Full Court unanimously found that his apology was not genuine. The rationale, as apparent from both the proceedings, is that the first apology arose on 16.7.2020, i.e., after 41 days, during which time every attempt was made to justify the conduct on merits and the apology was tendered as a matter of last resort. There was no contrition or remorse prior to that. The apology has been labelled as a repeated behaviour of what would amount to “slap, say sorry, and forget”. Since the statements issued by the petitioner caused huge damage to the Court and could not be repaired by the apology, the same was not accepted. The statements were not made in the heat of the moment, but were planned by way of a live telecast. Each of the members of the Full Court individually felt that the apology was only a paper apology. The privilege of the gown was

withdrawn.

5. We may note at the threshold that the High Court has objected to the maintainability of a petition under Article 32 of the Constitution of India. The designation as a Senior Counsel in terms of the Rules framed under the Advocates Act, 1961 does not create a right much less a fundamental right in favour of the petitioner. Thus, it was submitted that what has been withdrawn is a 'privilege' and not a 'right'. The very nature of conferment of a designation is submitted to be a privilege (***Indira Jaising v. Supreme Court of India***[2]) and, thus, the withdrawal of the privilege by those who conferred it would not make it justiciable at all especially since such withdrawal is not a bar to be granted such privilege again. It is thus submitted that in the absence of a right, no writ of mandamus can be issued.

6. It has been emphasised on behalf of the High Court that the conferment of this privilege weighs not only on the existence of certain legal acumen but a much higher standard of behaviour and if such pre-supposition disappears, the authority is empowered to withdraw the privilege. What has been urged is that re-conferment of this right on the petitioner through a writ of mandamus would be *de hors* the exercise of

2 (2017) 9 SCC 766

powers under statutory rules.

7. Dr. Singhvi and other counsel, coming to the aid of their colleague of long standing, did not seek to justify the conduct of the petitioner. The direction of the argument has been that this Court should show compassion. The withdrawal of designation is not limited by time and is disproportionately harsh as the petitioner is not being given an opportunity to redeem himself. The filing of an application afresh for designation after the specified time bar is stated to not really be a redemption.

8. Dr. Singhvi sought to explain that the petitioner had *bona fidely* raised issues within the institution regarding non-circulation of matters, based on a large number of complaints received from the members of the Bar by him by reason of his holding the position of the President. The petitioner endeavoured to resolve the grievances within the system by writing several letters and making many representations which were in a sober and restrained language. The grievance was stated to be not one against the Judges, but against the manner of working of the Registry. On account of his helplessness and not being able to provide solace to the lives of the suffering advocates, the petitioner even resigned as the

President of the Bar but on account of the unanimous opinion of the Bar, withdrew the same. The Press Conference was stated to be the culmination of his inability to resolve the disputes, as a last resort. The petitioner got emotionally overwhelmed during the Press Conference and made utterances of which he has been very apologetic from the very beginning. It was submitted that the emotional utterances were not pre-planned, and therefore, parts of what he said are sought to be relied upon to substantiate that he was not making allegations against the Bench as a whole.

9. In the proceedings before the Full Court also it was submitted that at the threshold an apology had been submitted. However, the Full Court had opined that even if the apology would have been given at the first instance, still the apology would not have been accepted as it was not submitted at the threshold. The consequence of the decision of the Full Court is stated to be that the contempt proceedings became *fait accompli*.

10. Dr. Singhvi really sought to canvas on the proportionality of the Full Court's decision, as did the petitioner who intermittently addressed the Court; even volunteering that he at times loses his balance while performing the role as the President of the Bar and that he is willing to

give an undertaking that he will never contest elections to the Bar Association. We informed him that was a decision of his own to take and we certainly would not like to inhibit his right to contest the elections as a member of the Bar. It was his say and that of his counsel that the petitioner has learnt his lesson and, thus, an opportunity must be given to him for redemption. The withdrawal of designation was stated to be the most severe punishment for any Senior Advocate and in that behalf, the observations of Chief Justice Dickson of the Canadian Supreme Court in a historic case of 'R. v. Oakes' were referred to in ***Modern Dental College v. State of M.P.***[3] as under:

> "The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."

11. In the conspectus of the aforesaid we really find little ground to interfere with the impugned order before us. We respect the views of the High Court but still endeavour to give one more and last chance to the petitioner. In a way this can really be done by recourse to Article 142 of the Constitution of India as there is merit in the

3 (2016) 7 SCC 353

contention of the learned counsel for the High Court that there is no real infringement of the fundamental rights of the petitioner. The question is in what manner this last chance should be given?

12. We are of the view that the ends of justice would be served by seeking to temporarily restore the designation of the petitioner for a period of two years from 1.1.2022. It is the High Court which will watch and can best decide how the petitioner behaves and conducts himself as a senior counsel without any further opportunity. It will be for the High Court to take a final call whether his behaviour is acceptable in which case the High Court can decide to continue with his designation temporarily or restore it permanently. Needless to say that if there is any infraction in the conduct of the petitioner within this period of two years, the High Court would be well within its rights to withdraw the indulgence which we have given for two years which in turn is predicated on the assurances given by the petitioner and his counsel for the immaculate behaviour without giving any cause to the High Court to find fault with his conduct. In effect, the fate of the petitioner is dependent on his appropriate conduct as a senior counsel before his own High Court, which will have the final say. All we are seeking to do is to

give him a chance by providing a window of two years to show that he truly means what he has assured us. We can only hope that the petitioner abides by his assurances and does not give any cause for the High Court or for us to think otherwise.

13. We dispose of the writ petition with the aforesaid directions with this sanguine hope.

...……………………………J.
[Sanjay Kishan Kaul]

...……………………………J.
[R. Subhash Reddy]

New Delhi.
October 28, 2021.