Court No. - 40

Case :- WRIT - C No. - 17851 of 2024

Petitioner :- Arun Mishra
Respondent :- Advocate General
Counsel for Petitioner :- In Person
Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.
Hon'ble Manjive Shukla,J.

1. Heard petitioner in person and learned Standing Counsel appearing on behalf of the State respondent.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is challenging the order dated May 7, 2024 passed by the Advocate General of the State of Uttar Pradesh. This order was passed by the Advocate General on an application made by the petitioner seeking consent of the Advocate General for filing criminal contempt application under Section 15(3)(b) of the Contempt of Courts Act, 1971.

3. Counsel appearing on behalf of the respondent/Advocate General of the State of Uttar Pradesh submits that this writ petition is not maintainable as the order of the Advocate General refusing to grant permission for initiating criminal contempt proceedings cannot be challenged by way of this writ petition. He submits that the Supreme Court has decided this issue in **P.N. Duda v. P. Shiv Shanker and Others** reported in **(1998) 3 SCC 167** and has placed reliance on paragraph nos.58 to 60 thereof to buttress his arguments that the remedy for refusal of grant of consent by

the Advocate General/Attorney General is filing an application before the Division Bench dealing with the criminal contempt matters. Paragraph nos.58 to 60 of the said judgement is delineated below :-

> *"58. In my opinion this is not the necessary conclusion that follows from the observations extracted above. Our attention has been drawn by Sri Ganguly, appearing for the learned Solicitor-General, to the decision in Rajagopala Rao v. Murtuza Mujtahdi [(1974) 1 Andh LT 170] and N. Venkataramanappa v. D.K. Naikar [AIR 1978 Kant 57 : ILR (1978) 1 Kant 287] that the grant or refusal of consent is not justiciable. My learned brother has not accepted the correctness of these decisions on the ground that the statute confers a duty and discretion on these law officers and that their action cannot be beyond judicial review as no person can be above law. I am, however, inclined to think there is something to be said in favour of the view taken by the two High Courts for two reasons.*
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> *59. In the first place the role of the Attorney-Genera1/Solicitor-General is more akin to that of an amicus curiae to assist the court in an administrative matter rather than a quasi-judicial role determining a lis involving rights of a member of the public vis-a-vis an alleged contemner. As pointed out by the Supreme Court in S.K. Sarkar v. V.C. Misra [(1981) 1 SCC 436 : 1981 SCC (Cri) 175 : AIR 1981 SC 723 : (1981) 2 SCR 331] there are difficulties in the court making frequent use of the suo motu power for punishing persons guilty of contempt. The Attorney-General offers his aid and assistance in two ways. On the one hand, he moves the court for action when he comes across cases where he thinks there is necessity to vindicate the dignity and reputation of the court. On the other, he helps in screening complaints from the public to safeguard the valuable time of the court. The observations of Lord Reid and Lord Cross in the Thalidomide case [Attorney General v. Times Newspapers Ltd.,*

(1973) 1 All ER 815] : A.G. v. Times Newspapers [(1973) 3 All ER 54 : 1974 AC 273, 321] of the House of Lords, in a different context, in Gouriet v. Union of Post Office Workers [1978 AC 435 (HL) : (1977) 3 All ER 70 (HL)] and of Lord Denning and Lawton, L.J. in the same case [1977 QB 729, 752-63 : (1977) 1 All ER 696 (CA)] in the Court of Appeal bring out this aspect of the Attorney-General's functions.

60. Secondly, if we analyse the types of action which the Attorney-Genera1/Solicitor-General may take on an application made to him, the position will be this. Firstly, he may grant permission in which case no further question will arise. I do not think it will be open to any other person to come to the court with a prayer that the Attorney-Genera1/Solicitor-General ought not to have given his consent. For, it would always be open to the court, in case they find no reason to initiate action, to dismiss the petition. Secondly, it is possible that the Attorney-Genera1/Solicitor-General may not be able to discharge his statutory function in a particular case for one reason or other. This was what happened in the case of Mohammed Yunus [(1987) 3 SCC 89 : 1987 SCC (Cri) 465] cited earlier. In that case it was only the Attorney-General who was unable to discharge his functions under Section 15 and the petitioner could move the Solicitor-General, who declined consent. But there might be cases in which both the Attorney-General and the Solicitor-General are not in a position to take a decision on the application made to them by a private party. Thirdly, both of them may refuse their consent. In the latter two cases, I am unable to see what purpose would be served by the court spending its time to find out whether the Attorney-Genera1/Solicitor-General should have given a decision one way or the other. For, the petitioner is not without remedy. It is open to him always to place the information in his possession before the court and request the court to take action, (see. Lord Cross in A.G. v. Times Newspapers [(1973) 3 All ER 54 : 1974 AC 273, 321]). Bhagwati, C.J. could have meant this when he

said that, if the consent of the Solicitor-General was withheld on irrelevant grounds, the petitioner was not without remedy."

4. We are at *consensus ad idem* with the submissions made on behalf of the respondent. Upon examination of the paragraphs of the aforesaid judgement cited by the counsel appearing on behalf of the respondent, we find that the Supreme Court has held that in cases of refusal of consent by the Advocate General/Attorney General no purpose would be served by the court spending its time to find out whether the Advocate General/Attorney General should have given a decision one way or the other. The petitioner is not without remedy. It is open to him always to place the information in his possession before the court and request the court to take action.

5. In light of the above ratio laid down by the Supreme Court, we are of the view that this writ petition is not maintainable before this Court. The petitioner is at liberty to move an appropriate application before the Division Bench dealing with the criminal contempt matters, in accordance with the High Court Rules and the decision of the Supreme Court noted above.

6. Accordingly, this writ petition is dismissed as not maintainable.

Order Date :- 15.7.2024
Dev/-

(**Manjive Shukla,J.**) (**Shekhar B. Saraf,J.**)