

A

M/S SPENCER AND CO., LTD. AND ANR.

v.

M/S VISHWA DARSHAN DISTRIBUTORS PVT. LTD. AND ORS.

DECEMBER 6, 1994

B

[MADAN MOHAN PUNCHHI AND K. JAYACHANDRA REDDY, JJ.]

C

Constitution of India—Articles 141, 142 and 144—Relationship between Supreme Court and High Court—Duty of High Court direction by Supreme Court to High Court couched in terms of request—High Court not complying with the direction—Held, High Court is under obligation to come in aid of Supreme Court and comply its directions even though couched in terms of a request Contempt of Court Act, 1971.

D

Special Leave Petitions were filed in this Court against certain interim orders passed by a Division Bench of the High Court of Madras. This Court issued notice on the Special Leave Petitions and the application for stay. On 14.1.1994 this Court passed an order directing the parties counsel to approach the High Court for an early disposal of the matter and inform this court the result thereof. This court further observed:

E

“We have no doubt that the High Court when approached for the purpose would give the matter due attention as is expected by us.”

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Thereafter, the special leave petitions were adjourned from time to time to await the decision of the High Court. On 18.8. 1994, a Division Bench of the High Court rejected the early hearing application on the ground that there is nothing important in the matter so as to give it precedence over other matters. While rejecting the early hearing application, the High court took notice of the order of this Court dated 14.1.1994.

G

On a consideration of the facts and circumstances of the case and after consulting the Solicitor General and the counsel for the parties this Court set aside the order of the High Court rejecting the early hearing application and directed the High Court to dispose of the matter expeditiously, at any rate within one month. Restraining itself from issuing contempt notice to the Judges comprising the Division Bench of the High Court, this Court

H

HELD : 1. When one superior speaks to another it is always in a language sweet, soft and melodious, more suggestive than directive. Judicial language is always chaste. Outwardly, the order dated January 14, 1994 is neither commanding in nature nor explicitly in terms of a direction. However, the High Court was bound to come in aid of the Supreme Court when it required the High Court to have its order worked out. The language of request oftenly employed by the Supreme Court in such situations is to be read by the High Court as an obligation, in carrying out the constitutional mandate, maintaining the writ of the Supreme Court running large throughout the country.

[298 B, 300 D]

Bhagavad Gita verse 73 referred to : *M/s Bayer India Ltd and Others v. State of Maharashtra and others*, [1993] 3 SCC 29, referred to.

2. There is a deliberate and conscious obstruction, put and recorded by the Hon'ble Judges of the High Court even when the judicial order of the Supreme Court dated 14.1.1994 was before them, in support of the prayer for an early durated hearing of the appeal.

[300 A]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) Nos. 12597-600 of 1993.

From the Judgment and Order dated 29.4.93 of the Madras High Court in C.M.P Nos 6300-6303 of 1993.

Dipankar P. Gupta , Solicitor General, G. L. Sanghi, K. Parasaran, S. Arvind, V. Balachandran, P. Parmeswaran, Ajit Kumar Sinha, Ms. Sarin Khanjuria and Ms Indu Malhotra for the appearing parties.

The following Order of the Court was delivered by :

PUNCHHI, J. It has been said before, and needs to be said again, what we are about to through this order, to strengthen the functional chains, which pull the judicial machine to its destination, on the track laid by the Constitution.

We have on our board special leave petitions nos. 12597-600 of 1993 against the judgement and order dated 29th April, 1993 of a Division Bench of the High Court of Judicature at Madras passed in some C.M.P.s in O.S.A. Nos 69-73 of 1993. These are at the instance of the first and the second defendant in the original suit filed by the plaintiff-first respondent, pending before a learned Single Judge of the High Court, in which in intra -

- A court appellate jurisdiction the petitioners have been subjected to certain interim orders of significance by the Division Bench. This court on 10-9-1993 ordered issuance of notice in the special leave petitions as also on the application for stay returnable within four weeks. On response, and consideration of the counter-affidavits filed by the respondents and rejoinder affidavits by the petitioners, we had on 14-1-1994 passed the following order:

- B "Let the matter stand by three months. In the meantime, parties counsel shall approach the High court for an early disposal of the O.S.A Nos. 69-73/1993 pending before it and apprise to us on the next date of hearing the result of it. We have no doubt that the High Court when approached for the purpose would give the matter due attention as is expected by us."

- C In order to await the outcome of the order we had kept the matter adjourned from time to time when a Division Bench of the Madras High Court consisting of Hon'ble Mr. Justice Gulab C. Gupta (now Chief Justice of Himachal Pradesh High Court) and Hon'ble Mr. Justice K.A. Thanikkachalam passed on August 18, 1994 the following order:

- D "These applications are filed for fixing early hearing of the appeal. The order of the Supreme Court dated 14-1-1994 in Special Leave Appeal (civil) no. 12597-600/93 (AN) is produced before us to support the aforesaid prayer. We have considered the matter with the seriousness it deserves; but find nothing important so as to give precedence to the Appeals over large numbers of pending appeals in this Court. The appellant must take his chance strictly in order in which he approached this Court by filing these appeals."

- E The applications are rejected."

- F Patently our order dated 14-1-1994 has been flouted, which is a matter of grave concern to us. On our part what else is expected? It has obvious ramifications, far and significant. We therefore have on our own solicited the advice of the Solicitor General of India Mr. Dipankar P. Gupta, besides that of Mr. K. Parasaran, Senior Advocate, the Ex-Attorney General of India, representing one of the parties instantly, and Shri G. L. Sanghi, Senior Advocate appearing for the other parties, as to what step need we take in respect of the Hon'ble but erring Judges of the High Court. Conceivably our action has parameters ranging between total apathy and punishment for contempt after initiating contempt proceeding. They have,

in all seriousness, in one voice, advised us to show at this juncture judicial statesmanship, and let the present order go on record, more as a reminder and a message, travelling far and wide, less as a warning solely to uphold and preserve the independence and majesty of the Supreme Court, as the highest Court of Justice in the Sovereign Republic of India; a pillar of the body politic, established under the Constitution, conferred with plenary powers under Article 141, 142 and 144 of the constitution. We appreciate and value their advice. We would rather remain advised on a matter like this, for then we are on sure ground.

The Article above referred to are reproduced hereafter as a reminding exercise:

Article 141 :

"LAW DECLARED BY SUPREME COURT TO BE BINDING ON ALL COURTS— The law declared by the Supreme Court shall be binding on all courts within the territory of India."

Article 142 :

"ENFORCEMENT OF DECREES AND ORDERS OF SUPREME COURT AND ORDERS AS TO DISCOVERY, ETC. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

Article 144 :

"CIVIL AND JUDICIAL AUTHORITIES TO ACT IN AID OF THE SUPREME COURT. All authorities, civil and

- A judicial, in the territory of India shall act in aid of the Supreme Court."

Ex facie courtesy is the blend of our order of January 14, 1994. Outwardly it is neither commanding in nature nor explicitly in terms of a direction. Such is not the sheen and tone of our order, meant as it was, for a high constitutional institution, being the High Court. It comes from another high constitutional institution (this Court) hierarchically superior in the corrective ladder. When one superior speaks to another it is always in language sweet, soft and melodious; more suggestive than directive. Judicial language is always chaste.

- B
- C Traditions and norms in this regard, well established and followed in this country since time immemorial, are best reflected in the 'Song Celestial', the Bhagavad Gita. It would for the purpose be opposite to turn to the 18th Chapter of the Bhagavad Gita, containing the concluding portion of the dialogue between Lord Krishan, the Best of Beings, (Purushotamma) and Arjuna, the Best of Humans, (Narotamma), both superiors in themselves. Verse 63 in the words of Lord Krishan is :
- D

guhyad guhyataram maya
vimrishayaitad eshneshena
yatheccchasi tatha kuru

E TRANSLATION

Thus I have explained to you the most confidential of all knowledge. *Deliberate on this fully, and then do what you wish to do.*

- F (Emphasis ours)

Verse 73 containing the answering words of Arjuna is :

nashto mohah smritir labdha
tvat prasaddan mayachyuta
sthito'smi gata sandehah
karishye vachanam tava

- G
- H TRANSLATION

O infallible one, my illusion is now gone. I have regained my memory by Your mercy, and *I am now firm and free from doubt and am prepared to act according to Your instructions.*

(Emphasis ours)

For Arjuna, the freedom given to act as he wished to, was an illusion; acting in conformity with the instructions of Krishna a bounden duty. This message has perceptibly percolated down as part of Indian Culture, philosophy and behavioural setting the tenor in the Constitution for inter action between the high constitutional authorities and institutions. One needs only to be aware of this thought with which the Constitution is soaked.

Recently, on a lesser aberration, this Court in *M/s. Bayer India Ltd. and others v. State of Maharashtra and others*, [1993] 3 SCC 29 had occasion to strike a sad note in the following words :

“5. We are saddened to notice that in spite of the Court's request contained in this order dated February 6, 1991, the High Court has not disposed of the review petition till now. The High Court was requested to dispose of the said writ petition within four months from the date of the said order and, at any rate, by September 30, 1991. It is more than two years since the order was made. While we certainly respect the independence of the High Court and recognise that it is a co-equal institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all courts within the territory of India. The request made in this case was contained in a judicial order. It does no credit to either institution that it has not been heeded to. We hope and trust that the delay in the disposal of the review is either accidental or on account of some or other procedural problem. Be that as it may, the present situation would not have arisen if only the review petition had been disposed of within the time contemplated in the order dated February 6, 1990.....”

“6. In this view of the matter, the I. A. is disposed of with the following directions:

(1) We reiterate our request to the High Court to dispose of the review petition expeditiously, at any rate within two months of this order.

(2)

(3)

A The case which we are dealing with is far more angular because there is a deliberate and conscious obstruction, put and recorded by the Hon'ble Judges of the High Court, even when the judicial order of this Court dated 14-1-1994 was before them; in support of the prayer for an early durated hearing of the appeal. The case in hand is of a negative or reverse action, whereas M/s Bayer India's case was barely of inaction, far less in gravity.

B The afore-narrated words we think, presently, are enough to assert the singular constitutional role of this Court, and correspondingly of the assisting role of all authorities, civil or judicial, in the territory of India, towards it, who are mandated by the constitution to act in aid of this Court. That the High Court is one such judicial authority covered under Article C 144 of the constitution is beyond question. The order dated 14-1-1994 of this Court was indeed a judicial order and otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court was bound to come in aid of this Court when it required the High Court to have its order worked out. The language of request oftenly employed by this Court in such situations is to be read by the High Court as an D obligation, in carrying out the constitutional mandate, maintaining the writ of this Court running large throughout the country.

Therefore, in these circumstances, we upturn the order of the High Court dated August 18, 1994 and reiterate our request to it to dispose of O.S.A. Nos. 69-73 of 1993 expeditiously, at any rate now within one month E from the date of communication of this order, as this court awaits the result thereof. Order be communicated to the High court forthwith. Copies thereof for information be also sent to the Hon'ble Judges of the Division Bench with our utmost respect.

F The special leave petition be listed on January 31, 1995.

B.K.M.