

PETITIONER:
ALOK KUMAR ROY

Vs.

RESPONDENT:
DR. S. N. SARMA AND ANR.

DATE OF JUDGMENT:
19/10/1967

BENCH:
WANCHOO, K.N. (CJ)
BENCH:
WANCHOO, K.N. (CJ)
BACHAWAT, R.S.
RAMASWAMI, V.
MITTER, G.K.
HEGDE, K.S.

CITATION:
1968 AIR 453 1968 SCR (1) 813

ACT:
High Court, Judge of-Appointed as Commission of Enquiry--If could act as Judge-Effect of High Court Judge receiving petition and passing order at a place other than seat of High Court--Chief Justice passing remarks against colleague-Propriety.

HEADNOTE:

One of the Judges of the High Court of Assam was nominated to be the Vacation Judge for hearing urgent civil and criminal applications when the High Court was closed for vacation from 17th September 1966 to 19th November 1966. Certain days were fixed as the vacation court days, and if there was an extremely urgent matter the Vacation Judge could hear it on any other day by appointment. At that time, the same Judge was heading a Commission of Enquiry under the Commission of Inquiry Act, and in connection with that work, on 2nd November 1966, the Vacation Judge went from Gauhati the seat of the High Court, to Sibsagar. The appellant was a student of a college at Gauhati. He was expelled from the college on 26th October 1966. He tendered an unconditional apology the next day and attended classes till the end of the month; but, on 2nd November, when he wanted to pay the fee for an examination to be held on 4th November, the fee was not received as the Principal of the College had not accepted the apology. As the Vacation Judge was not available at Gauhati, the appellant went to Sibsagar and presented a writ petition to the Vacation Judge. The Judge entertained the petition and passed an interim order. A copy of the interim order was prepared at Sibsagar and given to the appellant to be taken to Gauhati where it was sealed and served on the University. The appellant was then allowed to sit for the examination subject to the result of the writ petition. Thereafter, the papers relating to the writ petition were sent to the High Court at Gauhati and after the vacation was over, certain miscellaneous orders were passed on the writ petition. Eventually, it came up for hearing and was dismissed by a Bench consisting of the Chief Justice of the High Court and another Judge. The

Chief Justice held that: (1) the Vacation Judge, while performing the duties of a Commission of Enquiry, could not also Perform the duties of a Judge of the High Court (2) a Judge of the High Court could not hold a, sitting anywhere else except at the seat of the, High Court' and (3) the Vacation Judge exhibited 'unholy haste and hurry' and his I action disclosed 'an unnecessary zeal' on his part to assist the appellant. The other Judge agreed with the order of dismissal only on the. second ground.

In appeal to this Court,

HELD: (1) Judges of the High Court are of appointed under the Commission of inquiry act to head commission for various head purposes. These Commissions are temporary affairs and usually their
814

sittings are not continuous. A Judge of the High Court when lie is appointed to head such a Commission does not demit his office as a Judge nor does the appointment deprive him of his rights and privileges as a Judge of the High Court. Therefore, there was nothing objectionable on the part of the Vacation Judge working as a Judge of the High Court while he was heading the Commission, for, when the Commission was not actually sitting; he was entitled to sit and act as a Judge of the High Court. [817 G-H; 818 C].

(2) Assuming that a Judge of the High Court could not pass orders as a Judge anywhere else except at the seat of the High Court, the effect of such an assumption in the present case is, that the presentation of the writ petition at Sibsagar was irregular and the interim order passed thereon was also irregular. But, as the petition was sent to Gauhati later and dealt with by the High Court there, the petition must be deemed to have been represented to the High Court, and the irregularity in presentation must be held to have been cured. It was open to the High Court to consider whether the irregular interim order should be regularised or to deal with the petition on merits. But it was not open to the High Court to throw out the petition merely on the ground that the original presentation was irregular. [818 H; 819 A-E].

(3) Assuming that the Vacation Judge wrongly took the view that he could entertain the petition and pass the interim order at Sibsagar, he could only act in the way he did in the view that he took, and, in the circumstances, the observations of the Chief Justice were entirely uncalled for. There was no justification at all for such justification for criticism, the language should be dignified and rejustification for criticism, the language should be dignified and restrained. [820 B-D, G; 821 A].
Principal, Patna College v. K. S. Raman, [1966], 1 S.C.R. 974, distinguished.

JUDGMENT:

CIVIL APPELATE JURISDICTION: Civil Appeal No. 1028 of 1967.

Appeal by special leave from the judgment and order dated May 24, 1967 of the Assam and Nagaland High Court in Civil Rule No. 425 of 1966.

Sarjoo Prasad, Barthakur and R. Gopalakrishnan, for the appellant.

C. K. Daphtary, Attorney-General and Naunit Lal, for the respondent

The Judgment of the Court was delivered by

Wanchoo, C. J This is an appeal by special leave against the

judgment of the Assam High Court by which the writ petition filed by the appellant was dismissed. Brief facts necessary for present purposes are these. It appears that the appellant was expelled from the Medical College, Gauhati on October 26, 1966. It is said that the appellant tendered unqualified apology on October 27, 1966 and attended, classes up to the end of October 1966. The Principal, however, does not seem to have accepted the apology and when the appellant went on, November 2, 1966, to deposit the fee for the examination which was to be held from November 4, 1966, he was told that as he had been expelled and as the order of expulsion stood no examination fee would be accepted from him. It was thereafter that the

815

appellant filed the writ petition on November 3, 1966, out of which the present appeal has arisen.

It may be mentioned that the High Court was in vacation from September 17, 1966 to November 19, 1966. Mr. Justice S. K. Dutta was nominated as the Vacation Judge for the vacation and certain dates were fixed on which he was to sit and hear urgent civil and criminal applications. One of these dates was October 31, 1966 and another was November 10, 1966. It was also stated in the order that if there was any matter which was extremely urgent it would be heard on any other day by appointment through the Registrar.

It appears that Mr. Justice Dutta was also working as a Commission of Enquiry during that time. For that purpose he had to go out of Gauhati, which is the seat of the High Court. It seems that Mr. Justice Dutta went away to Sibsagar after the vacation sitting on October 31, 1966. Therefore on November 2, 1966 he was not available at Gauhati, even though he was the Vacation Judge and even though the order relating to vacation sittings said, that if any matter was extremely urgent it could be heard on any other day by appointment through the Registrar. As the examination was to be held from November 4, 1966, the filing of the writ petition against the order of expulsion was undoubtedly a very urgent matter, if any order was to be obtained before November 4, 1966. What the appellant is said to have done was this. He gave notice to the Government Advocate on November 2, 1966 at Gauhati as required by the Rules and thereafter went to Sibsagar where Mr. Justice Dutta was holding the Commission of Enquiry and presented the writ petition there. This petition was entertained by Mr. Justice Dutta and he passed interim orders thereon. A copy of the interim order was prepared at Sibsagar and given to the appellant to be taken to Gauhati where it was to be sealed. The appellant took the order to Gauhati and after getting it sealed served it on the university. He was thereupon allowed to sit at the examination subject to the result of the writ petition. It also appears that thereafter the papers relating to the writ petition were sent to Gauhati and the High Court had occasion to deal with the writ petition and passed miscellaneous orders thereon at Gauhati after the vacation was over. Eventually, the writ petition came up for hearing in May 1967. A preliminary objection was raised to the maintainability of the petition on behalf of the respondent. It was urged that as Mr. Justice, Dutta was holding a Commission of Enquiry he could not act as a Judge of the High Court. It was also urged in the alternative that even if he had the jurisdiction to act as a Judge of the High Court, he could not exercise that jurisdiction while at Sibsagar for the seat of the High Court was at Gauhati.

816

The petition. was heard by a Bench consisting of the learned Chief Justice and Mr. Justice Goswami. The learned Chief Justice seems to have held that Mr. Justice Dutta while performing the duties of a Commission of Enquiry could not also perform the duties of a Judge of the High Court. He further held that in any case as the seat of the High Court, was at Gauhati, Mr. Justice Dutta could not pass any order as a Judge of the High Court at Sibsagar, which, was not the seat of the High Court. Finally, the learned Chief Justice made certain remarks as to the "unholy haste and hurry exhibited in dealing with this matter by Dutta J." at Sibsagar and set aside the order of stay granted by Dutta J. on November 3, 1966 and also set aside the order issuing rule nisi, and dismissed the petition. Goswami J. did not fully agree with the learned Chief Justice, though, he agreed with the order setting aside 'the stay granted' by Dutta J. and also agreed with the order dismissing the writ petition. He observed that "I shall content myself in assuming that Dutta J. had no anxiety other than what prompted him to do in the interest of what his Lordship thought to be justice". when he passed the order in question on November 3, 1966. But he was of the view. that a Judge of the High Court could not hold a sitting anywhere in Assam except at the seat of the High Court, namely, Gauhati, and therefore the order passed on November 3, 1966 by Dutta J. was without jurisdiction.

The present appeal has been brought before us by special leave and it is urged on behalf of the appellant that it was not correct to hold that Dutta J. could not act as a Judge of the High Court while he was working as a Commission of Enquiry and further that Dutta J. had no jurisdiction while at Sibsagar to entertain the petition and to pass the stay order. We shall deal with the two contentions in that order. We are of opinion that the learned Chief Justice was not right when he held that Dutta J.; could not act as a Judge of the High Court while he was working as a Commission of Enquiry' Learned Attorney-General appearing for the State of Assam did not support that view It also appears that Goswami J. has said nothing on this aspect of the matter; presumably he did not agree with the view of the learned Chief Justice. Often times, Judges of High Courts are appointed under the Commission of Enquiry Act to head Commissions for various purposes. These Commissions are temporary affairs and many a time their sittings are not continuous. A Judge of the High Court when he is appointed to head a Commission, of this kind does not demit his office as a Judge and when the Commission is not actually sitting he is entitled to sit as a Judge of the High Court. It is only where a Judge of the High Court is appointed to another post, which is a whole time post that it may be said that on such appointment he can no longer work as a Judge of the High

817

Court for the time being, though even in such a case, when the work is over, he reverts as a Judge of the High Court without fresh appointment. Such, for example, was the case of Incometax Investigation Commission where the appointments were whole time and a Judge of the High Court appointed as a member of the Investigation Commission could not at the same time work as a Judge of the High Court. But Judges appointed to head Commissions under the Commission of Enquiry Act stand in a different position altogether. As we have said, these Commissions are temporary and are not whole time posts and their sittings are not even continuous. In such a case we, are of opinion that a Judge appointed to'

head a Commission of Enquiry remains as part of the High Court and if the Commission of Enquiry is not working continuously he is entitled to sit and act as a Judge of the High Court in the intervals. It is not disputed that Dutta J. was heading a Commission of Enquiry of this temporary nature, and as such we are of opinion that he was entitled to sit and act as a Judge of the High Court whenever he had time to do so. It is remarkable that Dutta J. was appointed Vacation Judge while he was working as Commission of Enquiry and that appointment was in our opinion quite in order. For by heading the Commission of Enquiry, Dutta J. did not demit his office as a Judge of the High Court. We cannot therefore agree with the observation of the learned Chief Justice that Dutta J. could not have assumed to himself the role and duties of a Judge of the High Court exercising jurisdiction as a Bench of the High Court. We also disagree with the view expressed by the learned Chief Justice that it was highly objectionable on the part of Dutta J. to work as a Judge of the High Court while he was heading the Commission of Enquiry. We are of opinion that where a Judge heads temporary Commissions of Enquiry under the Commission of Enquiry Act, he remains a part of the High Court and is entitled to sit and act as a Judge of the High Court whenever he thinks fit. The appointment of a Judge as Commission of Enquiry does not deprive him of the rights and privileges of a Judge of the High Court. Whenever he finds time to attend to his duties as a Judge of the High Court while acting as a Commission of Enquiry, he can do so.

The next question is whether Dutta J. could act as a Judge of the High Court at Sibsagar when Gauhati is the seat of the High Court under the notification issued under Art. 10 of the Assam High Court Order, 1948. We do not think it necessary to decide this question in the present appeal. We shall assume that Dutta J. could not pass orders as a Judge of the High Court anywhere else except at Gauhati which is the seat of the High Court. Even assuming that, all that can be said is that the presentation of the writ petition before Dutta J. at Sibsagar was irregular. As we have said already, he was still a Judge of the High Court while holding a Commission of Enquiry at Sibsagar,

818
and if he received the petition at Sibsagar, all that can be said is that the petition was irregularly presented there when it should have been presented at Gauhati. But assuming that the presentation of the petition at Sibsagar was irregular, the fact remains that the petition was sent to Gauhati later and was dealt with there. We do not see why the petition should have been dismissed because the presentation was irregular. There is in our opinion no difficulty in holding that the petition was represented when it was sent to Gauhati and was dealt with there in the High Court. The presentation should have been taken in such circumstances to have been made at Gauhati when the petition reached Gauhati and the petition should have been dealt with as such. Of course, if the presentation of the petition at Sibsagar was irregular, the order passed by Dutta J. would also be irregular, But when the petition came to the High Court thereafter, the irregularity in presentation must be held to have been cured. It was open to the High Court to, consider whether the irregular order of stay should be regularised. Apart from that even if the irregular stay could not be regularised, there was no reason why the petition should have been dismissed merely on the ground that it was irregularly presented, when it finally did reach

the High Court at Gauhati. Whatever therefore may be said about the order under appeal setting aside the irregular order of stay, we are of opinion that the High Court was not right in dismissing the petition as it did on May 24, 1967. The petition must be held to have been represented to the High Court when it reached the seat of the High Court at Gauhati and should have been dealt with as such and could not have been thrown out merely on the ground that the original presentation on November 3, 1966 was irregular. We are therefore of opinion that the order dismissing the petition must be set aside and the High Court should now go into the question whether the petition should be admitted and whether it should be set down for hearing. Finally we consider it our duty to refer to certain observations made by the learned Chief Justice with respect to Dutta J.'s handling of the petition. In this connection reference was made by the learned Chief Justice to a decision of this Court in Principal, Patna College V. K. S. Raman(1). It is enough to say that the facts of that case are very different from the facts of the present case and the observations on which the learned Chief Justice relies do not apply to the facts of the present case. In the present case, the petition was presented during vacation when no Judge was actually sitting at Gauhati and in the circumstances the action taken by the appellant in presenting the petition at Sibsagar before Dutta J. who was the Vacation Judge and the only Judge available, after giving notice to the Government Advocate on November 2, 1966 at Gauhati, seen* to have been the only course open to him in the circumstances, for the examination

(1) [1966] 1 S.C.R. 974: A.I.R. 1966 S.C. 707.
819

was to be held from November 4, 1966 and the appellant came to know on November 2, 1966 when the examination fee was not accepted that he would not be able to sit at the examination. In the circumstances the observation of the learned Chief Justice that there was "unholy haste and hurry exhibited in dealing with this matter by Dutta J." is entirely uncalled for. Assuming that Dutta J. wrongly took the view that he could entertain the petition and pass the stay order at Sibsagar, he could only act in the way he did in the view that he took, and it cannot be said that this was a case of "unholy haste and hurry". We also cannot agree with learned Chief Justice that the notion of sending a) copy to Gauhati for getting it sealed so that it might be properly authenticated was in any way objectionable. The situation being what it was, that seems to us to be the only way open, once it is clear that Dutta J. took the view that he could entertain the petition and pass orders thereon even though that view may not be correct. Nor do we think that the learned Chief Justice was justified in observing that "the whole thing discloses an unnecessary zeal on the part of Dutta J. to assist the appellant". Once Dutta J. took the view that he had jurisdiction to entertain the petition and pass orders thereon, the order he passed and the steps he took so that the order was served before November 4, 1966 (which was the date of the examination) appear to us to be the only steps that could have been taken, and such steps cannot be said to be opposed to the great traditions that obtain in a High Court; nor can it be said that Dutta J.'s action reflected adversely on the judicial independence and aloofness of that august institution. There is no reason to hold that any unnecessary zeal was shown by Dutta J. in assisting the appellant when he passed the order which he did, once Dutta J. took the view that he had the

jurisdiction to entertain the petition and pass order thereon at Sibsagar. All that happened thereafter appears to us to be quite proper and cannot in any way reflect on the conduct of Dutta J. in this case. It is a matter of regret that the learned Chief Justice thought fit to make these remarks in his judgment against a colleague and assumed without any justification or basis that his colleague had acted improperly. Such observations even about Judges of subordinate courts with the clearest evidence of impropriety are uncalled for in a judgment. When made against a colleague they are even more open to objections. We are glad that Goswami J. did not associate himself with these remarks of the learned Chief Justice and, was fair when he assumed that Dutta J. acted as he did in his anxiety to do what he thought was required in the interest of justice. We wish the learned Chief Justice had equally made the same assumption and had I not made these observations castigating Dutta J. for they appear to us to be without any basis. It is necessary to emphasize that judicial decorum has to be maintained at all times and even where criticism is justified it must be in language of utmost restraint, keeping always in view that the person making the comment is

L/P(N)78CI-13

820

also fallible. Remarks such as these made by the learned Chief Justice make a sorry reading and bring the High Court over which he presides into disrepute. Even when there is justification for criticism, the language should be dignified and restrained. But in this case we do not see any justification at all for such remarks.

We therefore allow the appeal and) set aside the order of the High Court dismissing the writ petition and send it back to the High Court with the direction that the High Court should reconsider whether the petition should be admitted, taking it as represented on the day it reached Gauhati, and' if so it should be set down for hearing in due course. In the circumstances we make no order as to costs.

V.P.S.

Appeal allowed.

821