

PETITIONER:
E.S. REDDI

Vs.

RESPONDENT:
CHIEF SECRETARY, GOVT. OF A.P. & ANR.

DATE OF JUDGMENT 01/05/1987

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 1550 1987 SCR (3) 146
1987 SCC (3) 258 JT 1987 (2) 339
1987 SCALE (1) 919

ACT:
'Senior Counsel' designated as such by the Court--Responsibility to put pleadings into proper and satisfactory form--Need for mutual respect between the Bench and the Bar while advancing arguments.

HEADNOTE:

An officer involved in a defalcation case who was suspended, challenged the order of suspension under Art. 14 of the Constitution on the ground that another officer similarly situate had merely been transferred. The order was quashed by a Single Judge of the High Court, but, on appeal, his judgment was reversed by the Division Bench. The matter came up before the Court by way of a Special Leave Petition.

The counter-affidavit filed by the State Government indicated that it had initiated action to prosecute two other officers involved in the case. When the Special Leave Petition came up for hearing, the Court made an interim order directing the counsel to convey to the State Government the Court's concern at the petitioner alone having been placed under suspension and, indicating that if the State Government did not pass any order placing the other officers, who, on a perusal of the investigation report, appeared to be equally culpable, under suspension, it may become necessary for the Court to revoke the suspension of the Special Leave Petitioner at the next hearing. When the matter came up again, it had to be adjourned by the Court with another interim order directing the State Government to pass necessary orders for suspension of all the delinquent officers. In anticipation of action by the State Government, two other officers involved in the case filed applications praying for recall of the two interim orders aforesaid. However, the two officers in question were also placed under suspension before the matter finally came up for hearing.

The Court impressed upon counsel appearing for the applicants who had prayed for recall of the interim orders that the proper course for them was to move the State Government by way of appeal and/or representation against their suspension. While counsel for one of the applicants accepted that suggestion and withdrew the application, counsel for the other applicant did not do so. The latter applicant had,

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in his application, made certain reckless allegations and cast aspersions on the Court. The counsel appearing for him gave the impression that the application had been settled by him without noticing the offending averments but went on to advance arguments with undue vehemence and unwarranted passion.

The Court, while dismissing the Special Leave Petition as infructuous and expressing disapproval of the manner in which arguments had been advanced on behalf of one of the applicants.

HELD: By virtue of the pre-eminence which 'Senior Counsel' enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupies a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honour and privilege conferred on Advocates of standing and experience by the Chief Justice and the Judges of this Court. They thus become leading counsel and take precedence on all counsel not having that rank. A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors. [153C-E]

In this case, not only were the arguments advanced with undue vehemence and unwarranted passion, reflecting identification of interests beyond established conventions but were of degrees not usual of enlightened senior counsel to adopt. The majesty of law and the dignity of Courts cannot be maintained unless there is mutual respect between the Bench and the Bar and the counsel act in full realisation of their duty to the Court alongside their duty to their clients and have the grace to reconcile themselves when their pleas and arguments do not find acceptance with the Court. Neither rhetoric nor tempestuous arguments can constitute the sine qua non for persuasive arguments. [153A-C]

Rondel v. W, [1966] 3 All ER 657 and Rondel v. Worsley, [1967] 3 All ER 993, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Miscellaneous Petition No. 25533 of 1986.

IN THE MATTER OF T.V. CHOUDHARY, A MEMBER OF

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THE INDIAN ADMINISTRATIVE SERVICE (UNDER SUSPENSION)
WITH

Special Leave Petition No. 14045 of 1985.

From the Judgment and Order dated 18.10.1985 of the Andhra Pradesh High Court in W.P. No. 891 of 1985.

P.P..Rao, Mrs. Shyamla Pappu, B. Kanta Rao, Ms. Malini Poduval, B. Parthasarathi, Mrs. Indra Sawhney and B.B. Sawhney for the Petitioner.

Dr. Y.S. Chitale, T.V.S.N. Chaff, Ms. Vrinda Grover and Ms. Sunila Monigude for the Respondents.

The Judgment of the Court was delivered by

SEN, J. This is an application made by one T.V. Choudhary, a Member of the Indian Administrative Service, under suspension, for recalling the Court's orders dated May 5, 1986 and August 11, 1986 passed in Special Leave Petition No. 14045 of 1985.

We shall first deal with the Special Leave Petition of E.S. Reddi, a member of the Indian Administrative Service belonging to Andhra Pradesh cadre and who worked as the Vice-Chairman-cum-Managing Director of the Andhra Pradesh Mining Corporation. It is directed against a judgment of the Division Bench of the High Court dated October 18, 1985 reversing the judgment and order of a learned Single Judge dated September 2, 1985 and dismissing his petition under Art. 226 of the Constitution. By the writ petition, the petitioner had called in question the validity of an order of the State Government of Andhra Pradesh dated February 11, 1985 placing him under suspension under sub-r. (1) of r. 13 of the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1963. The main grievance of the petitioner before the High Court was that the impugned order of suspension was wholly mala fide, arbitrary and irrational and violative of Art. 14 of the Constitution as there was no justification for the differential treatment meted out to him while the applicant T.V. Choudhary, also a member of the Indian Administrative Service, who worked in various capacities viz. as General Manager, Functional Director, Member, Board of Directors and Vice-Chairman-cum-Managing Director and

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was involved in the commission of the alleged irregularities, had merely been transferred from the Corporation and posted as Managing Director, Andhra Pradesh State Textile Development Corporation. That objection of his was sustained before the learned Single Judge who by his judgment dated September 2, 1985 quashed the impugned order of suspension. The Division Bench however by the judgment under appeal has reversed that judgment and dismissed the writ petition holding that the findings arrived at by the learned Single Judge are not warranted by the material on record.

Civil Miscellaneous Petition No. 255 10/86 is filed by R. Parthasarthy, a member of the Indian Administrative Service who was Vice-Chairman-cum-Managing Director of the Corporation for the period from March 1979 to October 1979 and was working as the Commissioner of Commercial Taxes, while Civil Miscellaneous Petition No. 25533/86 is by T.V. Choudhary, also a member of the Indian Administrative Service and who was working as the Managing Director of the Andhra Pradesh State Textile Development Corporation. These two applications are for recalling the Court's orders dated May 5, 1986 and August 11, 1986 on the ground that they prejudicially affect the applicants. The matter relates to defalcation of a huge amount of Rs. 1.50 crores by certain officers of the State Government whose services were placed on deputation with the Corporation. Admittedly, the Anti Corruption Bureau, Andhra Pradesh has registered a case against these officers for having committed alleged offences punishable under s. 120B read with s. 420 of the Indian Penal Code and s. 5(1)(d) of the Prevention of Corruption Act, 1947 as its preliminary report revealed a prima facie case against them.

On December 12, 1985 the Court issued notice on the Special Leave Petition. It appeared from the counter-affidavit filed by the State Government that the Anti Corruption Bureau had finalised the investigation and the Director General had submitted his report dated March 25, 1986 which was under consideration of the Government. It also appeared that the State Government of Andhra Pradesh had addressed letters dated May 2, 1984 for sanction of the Central Government under s. 6(1)(a) of Prevention of Corruption Act, 1947 for the prosecution of R. Parthasarthy and of the State

Government of Maharashtra for the prosecution of P. Abraham, I.A.S. as he is borne on the Maharashtra cadre and was on deputation to the Andhra Pradesh. In compliance with the Court's order, the State Government placed before us the letter of the State Government dated May 2, 1984

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as also the report of the Director General, Anti Corruption Bureau, Andhra Pradesh dated May 25, 1986. After hearing the parties on May 5, 1986, we made the following order:

"In compliance to this Court's order, Shri P. Ram Reddy, learned counsel for the State Government places before us the letter of the State Government dated May 2, 1984 as also the report of the Director-General, Anti-corruption Bureau, Andhra Pradesh dated March 25, 1986. It appears from the letter that sanction of the Central Government is necessary under s. 6(1)(a) of the Prevention of Corruption Act, 1947 for the prosecution of R. Parthasarthy, IAS and that of the State Government of Maharashtra for the prosecution of P. Abraham we have perused the report of the Director-General and it cannot be said that the charges levelled against the petitioner are groundless. It is somewhat surprising that the petitioner alone should have been placed under suspension by the State Government pending contemplated departmental enquiry under r. 13 of the A.P. Civil Services (Classification, Control & Appeal) Rules, 1963 and not the other two officers T.V. Choudhary and S.M. Rao Choudhary, the then Managing Director who it appears are equally culpable.

The matter is adjourned till after vacation to enable the State Government to obtain the requisite sanction from the Central Government for the prosecution of R. Parthasarthy and that of the State Government of Maharashtra for the prosecution of P. Abraham under s. 6(1)(a) of the Act. Shri P. Ram Reddy learned counsel for the State Government shall in the meanwhile convey to the State Government the concern expressed by this Court that the petitioner alone could have been placed under suspension and not the other officers who are alleged to be co-accused. We are afraid, if the State Government does not pass any order placing the other officers under suspension it may become necessary for the Court to revoke the suspension of the petitioner at the next hearing."

When the matter came up after vacation on August 18, 1986 it had to be adjourned with a direction that the State Government should in the meanwhile pass necessary orders for suspension of the delinquent officers. In anticipation of action by the State Government, the

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two applicants R. Parthasarthy and T.V. Choudhary moved applications on September 2 and September 3, 1986 for recalling the directions made on May 5, 1986 and August 11, 1986. The applications were listed for directions on September 5, 1986. On motion being made by learned counsel appearing for the applicants, it was directed that the applications be placed for hearing on September 9, 1986. The State Government in the meanwhile on September 6, 1986 passed

orders for suspension of P. Parthasarthy and T.V. Choudhary under r. 13(1) of the Rules. We were apprised of this fact when the applications came up for hearing on September 9, 1986 that the State Government had already placed them under suspension.

In the special leave petition, the only contention of the petitioner E.S. Reddi was that the action of the State Government in making selective suspension suffered from the vice of arbitrariness and offended against Art. 14 of the Constitution inasmuch as persons like the applicant T.V. Choudhary who were equally culpable have merely been transferred while he has been singled out and placed under suspension under sub-r. (1) of r. 13 of the Rules without any rational basis and that such arbitrary action of the State Government was tantamount to denial of equal treatment to persons similarly placed. In view of the subsequent order passed by the State Government on September 6, 1986 placing other officers including the applicant T.V. Choudhary under suspension under r. 13(1) of the Rules pending their prosecution, the special leave petition has become infructuous. It is accordingly dismissed.

That takes us to C.M.P. Nos. 25510/86 and 25533/86 filed by R. Parthasarthy and T.V. Choudhary respectively. We impressed upon the learned counsel appearing for them that the proper course for the applicants was to move the Government by way of appeal and/or representation against their suspension and not by these applications for recalling the Court's orders. After the matter was heard at a considerable length, Smt. Shyamala Pappu, learned counsel appearing for R. Parthasarthy very properly prayed for leave to withdraw C.M.P. NO. 255 10/86 as the applicant had already made a representation to the State Government. She prayed that a direction be made requiring the Government to consider the representation at an early date. Dr. Y.S. Chitale, learned counsel appearing for the State Government fairly agreed that the said representation would be considered by the Government on merits.

Turning next to C.M.P. No. 25533/86. We must strongly depre-

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cate the conduct of the applicant T.V. Choudhary, a member of the Indian Administrative Service and working as Managing Director of the Andhra Pradesh State Textile Development Corporation, to have made reckless allegations and cast aspersions on the Court. After denying his complicity, the applicant T.V. Choudhary goes on to assert:

"The Order of this Hon'ble Court directing the Government to suspend the other delinquent officers is made without affording an opportunity to the Applicant and presumably without considering the relevant provisions of law, case law and the parameters of judicial power and the necessity to observe the principles of natural justice.

It is submitted that the Order of this Hon'ble Court dated 11th August 1986 is illegal, insofar as it directed the Government to suspend the applicant and others, in view of the fact that the Government has exercised its discretion and transferred the applicant taking into consideration the recommendation of the Anti-corruption Bureau. It is well settled that a Court of law cannot compel a statutory authority to exercise its statutory discretion in a particular manner. The legislative will in conferring discretion in an

essentially administrative function cannot be interfered with by Courts."

To say the least, the averments are highly objectionable. It was expected that the applicant, who is a very senior member of the Indian Administrative Service, should have shown greater responsibility before making such unfounded allegations and uncalled for aspersions. On a motion being made on September 5, 1986 by Shri P.P. Rao, learned counsel for the applicant, it was directed that the application shall be listed for hearing on September 9, 1986. At the same time, we drew the attention of the learned counsel to the improper and objectionable averments made by the applicant. We were given the impression that the application had been settled by the learned counsel without noticing the offending averments.

We wish we could have rested content with concluding the judgment with the operative portion of our conclusions on the merits of the case but we find with a sense of anguish and heaviness of heart that we have to express our disapproval of the manner in which the arguments were advanced before us on behalf of the applicant T.V. Choudhary.

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Not only were the arguments advanced with undue vehemence and unwarranted passion, reflecting identification of interest beyond established conventions but were of degrees not usual of enlightened senior counsel to adopt. The majesty of law and the dignity of courts cannot be maintained unless there is mutual respect between the Bench and the Bar and the counsel act in full realisation of their duty to the Court alongside their duty to their clients and have the grace to reconcile themselves when their pleas and arguments do not find acceptance with the Court. It is needless for us to say that neither rhetoric nor tempestuous arguments can constitute the sine qua non for persuasive arguments.

By virtue of the pre-eminence which senior counsel enjoy in the profession, they not only carry greater responsibilities but they also act as a model to the junior members of the profession. A senior counsel more or less occupied a position akin to a Queen's counsel in England next after the Attorney General and the Solicitor General. It is an honour and privilege conferred on advocates of standing and experience by the Chief Justice and the Judges of this Court. They thus become leading counsel and take precedence on all counsel not having that rank. A senior counsel though he cannot draw up pleadings of the party, can nevertheless be engaged "to settle" i.e. to put the pleadings into "proper and satisfactory form" and hence a senior counsel settling pleadings has a more onerous responsibility as otherwise the blame for improper pleadings will be laid at his doors.

Lord Reid in *Rondel v. Worsley*, [1967] 3 All ER 993 has succinctly set out the conflicting nature of the duties a counsel has to perform in his own inimitable manner as follows:-

"Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. As an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must

not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which

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the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would -or might seek legal redress if that were open to him."

Again as Lord Denning, M.R. in *Rondel v. W.*, [1966] 3 ALL ER 657 would say 'he (the counsel) has time and again to choose between his duty to his client and his duty to the Court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly. When a barrister or an advocate puts his first duty to the Court, he has nothing to fear'. In the words of Lord Denning:

"It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

We are constrained to give expression to our views with a feeling of remorse to remind the counsel of that sense of detachment and non-identification they are expected to maintain with the causes espoused by them and not with a view to belittle the profession or cast aspersions on counsel.

After bestowing our dispassionate consideration of the matter we found ourselves left with no other alternative but to dismiss the application made by T.V. Choudhary which was clearly misconceived and we direct the applicant to pay Rs.5,000 as costs to the State Government in view of the disapprobation his case and conduct has warranted.

H.L.C.
dismissed.

Petitions

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