

UL
19.07.2021
TN

CO No.891 of 2021

Sri Jadav Sardar @ Jadab Sardar and others
Vs.
Sri Basudeb Tarafder and others

This matter, although not appearing in the list as per my specific direction to appear on the next working day at the top of the list, the matter is treated to be on the day's list for the limited purpose of passing this order which does not pertain to the merits of the case.

By a judicial order dated July 16, 2021, this court had, apart from directing the matter to be returnable on the next working day, had specifically directed the Central Project Coordinator (CPC) to show-cause by 3 p.m. in my chamber as to why the virtual hearing disruptions were going on. Such show-cause reply was filed much after 3 p.m. and was handed over not in my chamber but to my A.C.O. on the said date. The latter was kind enough to immediately convey the same to me. Such report,

which is a part of CO No.1237 of 2021, which is also appearing in the list today, discloses merely that endeavour is going on to increase the bandwidth of connectivity for the virtual hearing facilities of this court from 2 mbps to 100 mbps. Such excuse has been put forwarded by the administration at least for the past month. However, since I was a part of a two-Judge Recruitment Committee previously, I personally know that at least 150 posts had been sanctioned by the Government and due procedure for the appointment to fill up the posts was undertaken by this court. Such posts covered the virtual hearing issues as well, since those included Data Entry Operators, System Analysts and Programmers. However, due to some unknown reasons, the said recruitments have not taken place as yet. The bandwidth issue was also discussed previously. If the aforesaid issues are remedied, most of the woes of the litigants and the Bar regarding virtual hearings would be resolved. Unfortunately, no such steps have been disclosed in the reply to the show-cause.

Certain facts, relevant to the issue, are required to be disclosed, since all candles do not make it to ornate dinners but some are meant to be burnt for protest marches.

In the present case, despite a specific judicial order making the matter returnable on the next working day at the top and despite this Bench having determination to take up the matter both on July 16, 2021 and today, which is the next working day thereafter, the matter is not appearing in my list. I was taken by surprise when it was disclosed by my court officer, on scrutiny, that the same is appearing before a different Division Bench.

First, I did not issue a criminal contempt but stopped short of doing so in my order dated July 16, 2021, nor is an order passed in a civil revisional case under Article 227 of the Constitution of India appealable before a Division Bench. Although it has been clarified that the Chief Justice (including Acting Chief Justice) is the Master of the Roster and “more equal among equals” (not by Orwell but our own Supreme Court), the excess equality pertains only to the Administrative Side of this court and cannot override the Appellate Side Rules, framed and modified by the Full Court comprised of all Judges of this Hon’ble Court. There is doubt as to whether the Chief Justice/Acting Chief Justice, in her/his administrative capacity as the Master of the Roster, can override a judicial order passed by a Bench having determination, fixed by the Chief

Justice/Acting Chief Justice herself/himself, and the file of the matter be assigned to some other court overnight. The Appellate Side Rules of this court clearly provide for quite a long time now that these matters are to be heard by Single Judges, coupled with the fact, as indicated above, that this court had determination on both the relevant dates to take up such matters; this creates translucence in the minds of all concerned parties.

“Do not wash your dirty linen in public” is a nice defence for the beneficiaries of an oppressive/corrupt system, but is the anathema of transparency, which is in-built in the concept of the judiciary being the last bastion of democracy. All stakeholders to the dispensation of justice, including the litigants, the members of the Bar, my esteemed colleagues, the Registry as well as every staff of this court, are entitled to the knowledge regarding the exact administrative mechanism in force at a relevant point of time for the allocation of cases. The ‘Master of Roster’ concept cannot be equated with the “Master of all I survey”, even as per the Supreme Court’s interpretation.

The peculiar circumstances of this case, which are unprecedented and led me to take up the matter by treating it to be on the day’s list, are as follows:

After the order was passed on July 16, 2021, long after the court hours, my regular Assistant Court Officer (ACO), who was not present in court on the date, informed me, by following his duty to the letter, that the Registrar General had called for the records of the case from this court.

As per my instruction, my ACO indicated to the Registrar General (RG), that she should not have the audacity or the gall to dictate as to what matter shall be allocated to each Bench, particularly in the teeth of a judicial order dated July 16, 2021.

'Chutzpah' (Yiddish) is probably not appreciated in the higher echelons of power. However, opacity creates whispers in the corridors and is not healthy for a judicial system.

I was amazed when my officer, as per my instruction, next intimated me that the RG had been directed to call for the records, to be allocated before a Division Bench, despite my judicial order dated July 16, 2021, on the instruction of the Hon'ble the Acting Chief Justice of this court.

A copy of the letter, allegedly written and signed by the Hon'ble Acting Chief Justice, who was not even present in Kolkata due to a personal bereavement in the family, was also sent via whatsapp and forwarded to me.

It appeared from the said communication that, indeed, an instruction had been issued by the Hon'ble Acting Chief Justice to the above effect, if the photocopy forwarded to me via my officer, by the RG, is to be taken on face value.

However, I specifically indicated to the RG, through my regular Court Officer, that no Division Bench can have determination to take up civil revisional applications, which concept is learnt by the junior-most advocates at the time of their entry at the Bar.

Since this Bench had determination on the relevant date, that is, July 16, 2021 as well as today, I felt it most indecent that, without showing the minimum courtesy of contacting me directly, the matter was sought to be assigned before some other Bench.

The power of assignment springing from the 'Master of Roster' concept, confines the Chief Justice's administrative power to assign specific Benches for taking up specific types of matters, which cannot be exercised at the whims of the RG or even the Acting Chief Justice.

Day-to-day assignments were never conceived in our practice life or even today, despite the existence of a specific judicial order by a Bench taking up a

particular matter, as per the determination assigned by the Acting Chief Justice himself.

Hence, I refused to part with the file, more so since the contact to my court officer was made much after the conclusion of court hours.

Surprisingly, my officer was given a call by the Assistant Registrar (Listing) on the very next date, apparently at the instance of the RG, to meet her on the following day, that is, a Sunday. My officer only complied with my instructions all through and informed me of the same, on which I requested my regular ACO to convey to the Assistant Registrar (Listing) that he may call me directly over the phone so that I can know the reason of such peculiar summons.

However, oddly, immediately after my instructions were communicated to the Assistant Registrar (listing), the RG retracted from such position and it was conveyed by the Assistant Registrar (listing) to my court officer that the latter need not to meet the RG on the next date.

The circumstances acquire peculiarity not merely because of the whimsical *modus operandi* adopted in suddenly assigning the matter before a Division Bench not having jurisdiction to take up these matters, but also from the fact that, by the

previous order dated July 16, 2021, I had directed a show-cause to be filed by the Central Project Coordinator (CPC) and had made certain caustic comments against the entire High Court administration including the RG and all concerned.

The 'direction' of the RG on my court officer to release the file of the case in the teeth of my specific direction that the matter would appear at the top of the list today, surprised me by the mere impudence of such action on the part of the RG. It may be mentioned here that, at no point of time, I was ever contacted by the RG or the Acting Chief Justice through His Lordship's Secretary or O.S.D. (Officer on Special Duty) seeking either my consent or at least having the courtesy to inform me about such assignment, which negates my judicial order in administrative capacity.

I have serious doubts about the transparency of the system of dispensation of justice in our court in view of the above chain of events. Hence, I feel it my duty to inform all the beneficiaries and victims of such translucence in the system, since not only the litigants and the members of the Bar are stakeholders in the matter, but also my esteemed colleagues on the Bench and other staff of this court.

It is evident that since we have restricted hearings to virtual appearances and stopped altogether physical appearances before the High Court, access to justice is being denied to most litigants and advocates coming from distant places and being technically and financially challenged. A coterie of members of the Bar and a limited few of the litigants are having an undue monopoly by running the virtual show, thereby depriving the common citizen of access to justice before this court, which is included in their right to life and equality before the law as guaranteed by the Constitution. Hence, I took the trouble of recording the above chronology of events for the knowledge of all. I sincerely hope that the uploading of this order will, at least, not be prevented by the powers-that-be, so that the contents of the order may appear in public domain.

I, however, clarify that the entire order has been passed by me of my own volition and my officers of the court have merely carried out my instructions and are not responsible at any stage for any of the observations above.

However, I have not learnt during my combined quarter of a century as a practicing advocate and a few years as a Judge of this court, to violate judicial decorum and propriety.

Hence, in deference to the mandate of the Master of Roster, as conveyed through the RG and by enlistment of the matter before a different Division Bench, I have no special interest in the matter on merits and feel it appropriate that, by following the basic tenets of transparency and judicial decorum, the matter, that is, CO No.891 of 2021 ought to be heard on merits by the Division Bench where the same has been assigned by the Master of the Roster of cases, subject to the said Bench having determination to hear this matter in accordance with law.

Hence, let this order be uploaded on the High Court's website and a copy thereof be kept on the record. Immediately thereafter, the records shall be sent to the Division Bench where the matter is appearing as Item No.6, for hearing, under the heading 'Assigned Matters'.

Hence, I release the matter on the above grounds, from my list, subject to uploading of this order on the official website of our court and this order being tagged with the file.

The parties and all concerned shall act on the basis of the server copy of this order instead of insisting upon prior production of a certified copy thereof.

(Sabyasachi Bhattacharyya, J.)