

Judicial Restraint and Executive Accountability: The Supreme Court's SOP on Personal Appearance of Officials

Vasuki M¹

¹LLM Student, Government Law College, Coimbatore.

Abstract— In the case of *The State of Uttar Pradesh & Ors. v. Association of Retired Supreme Court and High Court Judges at Allahabad & Ors.*, the Supreme Court held matters regarding the regular directions for the personal appearance of government officials and the threat of contempt proceedings before the courts. The Court held the importance of the doctrine of separation of powers as stated in the Indian Constitution, requiring institutional balance between the legislature, the executive, and the judiciary. The regular summoning of officials being against effective governance, the Court evolved a “Standard Operating Procedure (SOP) regarding personal appearances” in court to allow judicial restraint, avoid coercive power of contempt, and ensure efficient governance in conjunction with the supremacy of the courts and the rule of law.

Index Terms— Doctrine of separation of power, Standard Operating Procedure, Judiciary, Contempt.

I. INTRODUCTION

In the Indian constitution separation of power is one of the basic structures. Separation of power means dividing the powers of government into three organs such as legislature, executive and judiciary. These three organs should not interfere with the powers of each other. But in India separation of power is not followed fully to prevent concentration of power so there is check and balance between these organs. If the executive does not implement the laws enacted by the legislature properly, the judiciary will come into play and direct the executive to do their act properly. If the executive wilfully disobey the orders or directions given by the court, the court may invoke contempt proceeding against that executive. In the present case *State of Uttar Pradesh & ors. Vs. Association of Retired Supreme Court and High Court Judges At Allahabad & ors.*¹ deals with separation of power and power of contempt of court invoked by the court.

II. FACTS OF THE CASE

A. Writ Petition before High Court

In 2011, Association of retired supreme court and high court judges at Allahabad filed a writ petition before the Allahabad High court. In that writ petition the petitioner sought an increase in the allowances granted to former High court judges for domestic help and other expenses. While the same is pending before the Allahabad High court, on 31 March 2014 the supreme court decided *P Ramakrishnan Raju vs. Union of India*.ⁱⁱ P Ramakrishnan Raju caseⁱⁱⁱ related to post-retirement benefits payable to the former judges of the high court. In this case the supreme court held, we appreciated the scheme formulated by the state of Andhra Pradesh and recommended other states formulate similar schemes for post-retirement benefits to former judges of the High Courts, preferably within six months from the Judgement.

In meantime contempt petitions were instituted before the supreme court for noncompliance of the decision in P Ramakrishnan Raju case^{iv} in the name of *Justice V.S. Dave, President, the Association of Retired Judges of Supreme Court and High Courts vs. Kusumjit Sidhu and Others*.^v And the supreme court directed all states to file affidavits detailing the steps taken by the state to comply with the direction given by the supreme court. The supreme court on 27 October 2015 closed the contempt petitions against the state of Uttar Pradesh by stating that the slight variation from the yardstick in the Andhra Pradesh scheme is permissible keeping in mind the local conditions and directed that states that are paying less than the yardstick, shall consider upward revision at the appropriate stage and time.

As stated in the affidavit filed by the state of Uttar Pradesh, on 3 July 2018 government of Uttar Pradesh issued a Government Order and revised the post-retirement benefits for former judges of the High

Court. As per the government order the domestic help allowance payable to retired Chief Justices and Judges of the High Court was increased to Rs.20,000/- (per month) for former Chief Justices and Rs.15,000/- (per month) for former judges. Under this revised scheme, after the death of a former Chief Justice or judge, the surviving spouse would be entitled to receive Rs.10,000/- and Rs7,500/- per month, respectively for life.

During the course of time in 2022, state of Andhra Pradesh increased the post-retrial allowance to Rs.50,000/- for former Chief Justices and Rs.45,000/- for former judges of the High Court. The petitioner made an application before the high court to amend the prayers in the writ petition and demanded equal pay like the new scheme framed by the government of Andhra Pradesh. Based on the submissions made by the parties, the Chief Justice of Allahabad High court proposed certain 'Rules for providing Domestic Help to Former Chief Justices and Former Judges of Allahabad High Court' as per their power under Article 229. On January 5 2023 High court allowed the petitioner's amendment petition. And high court directed as follows: "in order to expedite the matter, before any further order is passed, it would be appropriate that the Principal Secretary, Law and Justice, Government of Uttar Pradesh, shall appear along with the records and apprise the Court of the stand of the State Government in the matter."^{vi}

On the next hearing date 12 January 2023, the Principal Secretary, Law and Justice, Government of Uttar Pradesh were present before the High Court and submitted that the Rules proposed by the Chief Justice were pending consideration, certain queries were made to the High Court and the matter would be placed before the Cabinet for approval. The High Court listed the matter on 19 January 2023 by stating that above said queries would be addressed by the concerned committee of the high court.

On 19 January 2023, the counsel on behalf of the High Court submitted that while the queries about the Rules were resolved by the High Court, the State Government was raising queries in a piecemeal manner to keep the matter pending for a long period. The Additional Advocate General submitted that the Rules involve an amendment to the existing scheme and would be examined by the State Government expeditiously.

On the next hearing 23 March 2023, the High Court expressed its dissatisfaction about the delay by the State Government in notifying the Rules and revising the same and further summoned the Finance Secretary, Government of UP and all the associated Officers dealing with the file along with the Principal Secretary (Law), Government of UP to appear along with the records on the next hearing date.

On 4 April 2023 as directed by the high court, the Special Secretary, Finance and Principal Secretary, Law, Government of Uttar Pradesh were present. The Principal Secretary, Law submitted that the matter was placed before the Finance Department on six occasions, but approval was not accorded. On the other hand, the Secretary, Finance submitted that the Rules are beyond the competence of the Chief Justice and do not fall within the ambit of Article 229 of the Constitution. The High Court observed that "on perusal of the record with the assistance of the learned Additional Advocate General, do not find any such objection which is being pressed before this Court and in other words, the attitude of the officers of the Finance Department is not only contemptuous, but at the same time their stand/submission with regard to the competence of the Hon'ble Chief Justice/ Article 229 is not reflected from the record."^{vii} The High court also observed that "the audacity of the officers to raise the issue of competence of the Hon'ble Chief Justice, is not only unbecoming of a civil servant, but at the same time contemptuous."^{viii} The High Court also noted that Secretary, Finance agreed that if the rules notified by the governmental order superseding or amending the Governmental order date 3 July 2018, then there is no objection to approving the rules from the finance department side.

B. First Impugned Order

The High court on 4 April 2023 issued the first impugned order by directing the Principal Secretary Law and Secretary Finance Department stating as follows:

1. The Rules/Guidelines as proposed by the High Court shall be notified by amending/incorporating/superseding the Government Order dated 3 July 2018, forthwith;
2. The Finance Department would accord approval within a week thereafter;

3. The notification of the Government Order and the approval, thereof, shall be placed on record on the date fixed;
4. In the event the order is not complied, Additional Chief Secretary, Finance and the officers present today shall appear on the date fixed.^{ix}

C. Second Impugned Order

On 19 April 2023, the state of Uttar Pradesh made application before the high court to recall the first impugned order date 4 April 2023 on the following grounds:

1. The High Court did not have the power to pass the above directions;
2. The rules do not fall within the ambit of Article 229 of the Constitution;
3. The direction for the Rules to be notified and the Finance Department to accord approval thereafter cannot be complied with as the concurrence/advice of the Finance Department must be taken before notifying the rules; and
4. Only the Parliament and the Union government are competent to frame legislation/rules pertaining to post-retirement benefits for former judges of the High Courts.^x

That day Secretary (Finance) and the Special Secretary (Finance) were present and the Additional Chief Secretary (Finance) was not present. The High court observed that the officials of the Finance Department categorically stated that they have “no objection” if the Government Order issued in 2018 is modified or amended. The high court held that the recall application made by the state of Uttar Pradesh constituted “ex-facie criminal contempt”, as it did not indicate any valid reasons for non-compliance with the First Impugned Order. The High court on 19 April 2023 passed a second impugned order by directing that the officials who were present in the court, the Secretary (Finance) and the Special Secretary (Finance) be taken into custody and produced before the Court on the next day for framing of charges. Further, the Court issued bailable warrants against the Chief Secretary and the Additional Chief Secretary (Finance) to ensure their presence before the Court on the next day.

D. Present Case

Above said first impugned order dated 4 April 2023 and second impugned order dated 19 April 2023 were

challenged by the state of Uttar Pradesh (petitioner) by way of appeal before supreme court.

III. ISSUES INVOLVED

1. Whether the High Court had the power to direct the State Government to notify Rules proposed by the Chief Justice pertaining to post-retirement benefits for former Judges of the High Court under Article 229?
2. Whether the power of criminal contempt could be invoked by the High Court against officials of the Government of Uttar Pradesh on the ground that the application for recall was ‘contemptuous’?

IV. INTERIM ORDER

On 20 April 2023, the supreme court in its interim order held that stayed the operation of the impugned orders of the Division Bench of the High Court of Judicature at Allahabad dated 4 April 2023 and 19 April 2023 till the next date of listing and the officials of the Government of Uttar Pradesh, who were taken into custody were directed to be released.

V. OBSERVATION OF THE COURT

A. Article 229

In this case, the first issue related to the first impugned order passed on 4 April 2023, to notify the rules proposed by the chief justice. In the Rules proposed by the Chief Justice, the preamble itself expressly states that it was made according to Article 229 of the constitution. Article 229 deals with officers and servants of the High Court in which clause 2 specifically deals with the conditions of service of officers and servants of the High court. The proviso to the Article mandates that the rules made relate to salaries, allowance, leave or pensions it must get approval of the Governor of the State. The bench observed that according to article 229(2) only to the service conditions of ‘officers and servants’ of the High Courts and does not include both sitting and retired Judges of the High Court. The bench held that the Chief Justice of the High court does not have the power to make rules pertaining to the post-retirement benefits payable to former Chief Justices and judges of the High Court under Article 229.

The Supreme court observed that while exercising power quoting wrong provisions of law does not

vitiates the exercise of power as long as there is another source in which the power derived, it is settled principle of law but in the case there is no source which empowers the Chief Justice of High Court to frame binding rules for post-retirement benefits of former judges of the High Court.

The bench held that the reliance of P Ramakrishnan Raju case^{xi} and Justice V.S.Dave case^{xii} judgements to justify the promulgation of Rules by the Chief Justice is based on an erroneous and over-expansive interpretation of the directions of this Court. In P Ramakrishnan Raju case^{xiii} the supreme court held that it appreciated the scheme in Andhra Pradesh and “hopes and trusts that the States who have not so far framed such scheme will formulate the same, depending on the local conditions.” In Justice V.S.Dave case^{xiv} the supreme court closed the contempt proceedings against the State of Uttar Pradesh noting that the state had already framed a scheme for post-retirement benefits. The Court held that slight variations from the scheme adopted in Andhra Pradesh were permissible and flexibility was contemplated in P Ramakrishnan Raju case^{xv} for states to frame their respective schemes and also directed that “states where the allowances paid are lesser than the State of Andhra Pradesh, shall consider the necessity of an upward revision of such allowances at the appropriate stage and time.” The bench held that nowhere in the judgements of above mentioned cases grant the Chief Justices of High Courts, acting on the administrative side, the power to frame rules about post-retirement benefits for former judges that must mandatorily be notified by the State Governments.

The bench further held that the Allahabad High court’s conduct on the judicial side of the order dated 4.4.2023 and 19.4.2023 also erroneous and acting of the high court under Article 226^{xvi} cannot expropriate the functions of the executive and compel the executive to exercise its rule-making power in the manner directed by it.

The bench observed that the first order dated 4.4.2023 is like issuing the writ of mandamus to compelling state to mandatorily notify the Rules and further held that directions given by the High court are impermissible and contrary to the separation power conferred by the constitution. Policy making by the government envisages various steps and the consideration of various factors, including local

conditions, financial considerations, and approval from various departments. And the bench further observed that The State Government was free to constructively consider the desirability of the Rules within its own decision-making apparatus. The bench further held that the High Court acted beyond its jurisdiction under Article 226 by frequently summoning officers to expedite the consideration of the Rules and issuing directions to notify the Rules by a fixed date, under the threat of criminal contempt, which is unconstitutional.

B. Contempt of Court

The Contempt of Courts Act, 1971 makes a clear distinction between civil contempt and criminal contempt. On the one hand, Wilful disobedience of a judgement, decree, direction, order, writ, or process of a court or wilful breach of an undertaking given to a court amounts to civil contempt. On the other hand, scandalising or lowering the authority of any court; prejudicing or interfering with judicial proceedings; or interfering with or obstructing the administration of justice which amounts to criminal contempt.

The bench observed that the High Court order dated 19.4.2023 stated that the actions of the officials of the Government of Uttar Pradesh constituted criminal contempt as there was no “valid reason” to not comply with the earlier Order dated 4.4.2023. The bench held that even if the High Court’s assessment is assumed to be correct, non-compliance with the First Impugned Order dated 4.4.2023 could not max constitute civil contempt. The bench further observed that the High Court failed to give any reasoning for how the non-compliance with the First Impugned Order dated 4.4.2023 constitute criminal contempt and the high court acted in hurry by invoking criminal contempt against the officials of the Government of Uttar Pradesh and directing for them to be taken into custody. The bench held that the present case did not even meet the standard for civil contempt.

The bench held that the power of the High Courts to initiate contempt proceedings cannot be used to prohibit parties or their counsel from availing legal remedies and in the present case the State of Uttar Pradesh was availing its legitimate remedy of filing a recall application. The bench on perusal of the record observed that the application was filed in a bona fide manner and the Finance Department raised its concerns regarding the competence of the Chief Justice before the High Court but its previous

conduct, including file notings of the department and letters to the Central Government, indicate that this objection had been raised by them in the past. The legal position taken by the Government in the recall application was evidently based on their desire to avail their legal remedy and not to wilfully disobey the First Impugned Order dated 4.4.2023 and the objection raised by the government of up never adjudicated by the High Court. The bench also observed that the objection raised by the government without even giving a chance to provide reasons the high court considered as criminal contempt and the actions of the government do not even constitute civil contempt and criminal contempt too. The bench also noted that in the present case the summary procedure taken by the high court even though permitted under section 14^{xvii} but this only invoked under extraordinary situations. The bench referred to the *Leila David v. State of Maharashtra*^{xviii} case in which the court held that in extraordinary circumstances only summary procedure can be used, where the dignity and authority of the court are directly threatened. But in the present case no such situation prevails, so invoking criminal contempt and taking government officials is not correct.

The bench also observed that as to summoning the Government officials, the high court would not use the power to summon as a tool to pressure the government under the threat of contempt. The bench stated that the court should not just rely on promises made by government officials in court, instead they should ask for written confirmation or instructions from legal officers like the Attorney General, Solicitor General, or Advocate Generals. So before summoning government officials in person, the court should consider the role of these legal officers.

The Attorney General is appointed by the President to represent the union government and his responsibilities are advising on legal matters, performing assigned legal duties, and representing the government in various courts.^{xix} Likewise the Advocate General is appointed by the Governor of each state and his responsibilities are providing legal advice to the state government, performs legal duties as assigned, and discharges functions conferred by the Constitution.^{xx} There are some other law officers who also represent the union and state government and also represent the various departments and officials that comprise the government. The bench observed that in the present

case, the high court neither taken up the legal stand of the state nor hearing the Additional Advocate General present in the court and the high court summoned government official frequently, issued bailable warrant against officials and also against chief secretary who is not even mentioned in the summon which is clearly shows that the high court attempted to pressuring the government to notify the Rules proposed by the chief justice of high court. With respect to this matter the bench referred *State of Uttar Pradesh v. Manoj Kumar Sharma*^{xxi} in which the court took a dim view about frequent summoning of government officials and putting indirect pressure on the government.

The bench also noted that while courts can review the actions of government officials but shouldn't summon them too often without a good reason. Courts should be respectful to officials and their legal representatives. Summoning government officials directly instead of relying on government representatives goes against the way the Constitution is set up.

VI. DECISION OF THE COURT

The bench comprising Chief Justice, Dr Dhananjaya Y Chandrachud, Justice J B Pardiwala and Justice Manoj Misra, set aside the impugned orders of the high court dated 4.4.2023 and 19.4.2023. The bench held that as for the first impugned order, the high court had power to frame rules related to post-retirement benefits for the former high judges and not had power to direct the State Government to notify Rules. As for the impugned order dated 19.4.2023 the bench highlighted that high court cannot invoke the criminal contempt against officials on the ground of application for recall of the first order dated 4.4.2023 which is contemptuous, in fact the actions of the officials not meet the standard of the both criminal contempt and civil contempt. The bench framed the SOP on Personal Appearance of Government Officials in Court Proceedings to regulate summoning the officials frequently and to avoid putting pressure on the government under that threat of contempt. The bench further directed that all courts across the country must follow the SOP and all high courts shall consider making rules regulating the appearance of officials after taking into consideration of the SOP.

VII. STANDARD OPERATING PROCEDURE
(SOP) ON PERSONAL APPEARANCE OF
GOVERNMENT OFFICIALS IN COURT
PROCEEDINGS^{xxii}

This Procedure is applicable to all court proceedings involving the government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court.

A. Personal presence pending adjudication of a dispute

Based on the nature of the evidence taken on record, proceedings are classified into three categories:

1. Evidence-based Adjudication: In these proceedings officials may be required to appear physically for testimony or document submission.
2. Summary Proceedings: In these proceedings usually rely on affidavits, documents, or reports.
3. Non-adversarial Proceedings: In these proceedings officials may appear to explain the complex policy or technical matter which law officers cannot address. Other than physical presence required in the 1, if the court may direct the officials, it should specify the reason for the direction.
4. The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

B. Procedure prior to directing personal presence

1. In exceptional cases wherein the in-person appearance of a government official is required the court should be given first option as video conferencing rather than appear in person.
2. The video conferencing link must be sent to concerned officials through email Id/Whatsapp/ SMS at least one before the scheduled hearing.
3. The reason for the personal presence of an official should be recorded as to why such presence is required.
4. Give sufficient time to the appearance of officials so that they can come prepared and notice to appear in person must be served to the officials in advance.

C. Procedure during the personal presence of government officials

In cases where the court directs the personal presence of an official or a party, these procedures is recommended to be followed:

1. The court should give a scheduled time slot for addressing the matter by an official when the personal presence is mandated.
2. The officials required only to stand while responding or making statements in the court, no need to stand throughout the proceedings.
3. During the proceedings, oral remarks with the potential to humiliate the official should be avoided.
4. The court must avoid making comments on the physical appearance, educational background, or social standing of the official appearing before the court.
5. The court should avoid comments on the dress of the official unless there is violation of the specified dress code applicable to their office. The court must provide an environment of respect and professionalism.

D. Time Period for compliance with judicial orders by the Government

1. When a court orders the government to do something complex, it needs to understand that the government has many layers of decision-making. So, the court should give the government a reasonable amount of time to follow the order.
2. If the government has already received a court order and needs more time to follow it, the court can consider this request. If the government has a good reason, the court might give them more time to comply.

E. Personal presence for enforcement/contempt of court proceedings

1. The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.
2. When the proceeding instituted for contempt by wilful disobedience of its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.
3. After issuance of notice, the court should carefully consider the reply by the alleged contemnor. Based on their reply the court should take appropriate action.
4. If the court needs a government official to appear in person, it should give them enough notice to prepare. However, the court should first try to let the official appear through a video call.
5. If the government doesn't follow the court's order on time, the court should understand if there were any technical issues or other problems. If the original

order didn't have a specific deadline, the court can give the government more time to comply.

6. If the government can't meet the deadline set by the court, they can ask the appellant or higher court for more time or to pause the order.

VIII. CONCLUSION

This judgement of the supreme court must be appreciated because frequently summoning the government officials significantly increases the workload of officials and it will lead to delays in

official duties of government officials. The Supreme Court's decision has important implications for the separation of powers between the judiciary and the executive. It reaffirms the principle that the judiciary should not encroach on the legislative and executive functions of the government. Overall, the case of The State of Uttar Pradesh vs Association of Retired Supreme Court and High Court Judges is a landmark decision that has reaffirmed the separation of powers and the importance of judicial independence.

REFERENCE

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