

(1999) 05 GAU CK 0045

In the Gauhati High Court

Case No : Civil Original Petition (Contempt) No. 263 of 1995

Aditya Sonowal

APPELLANT

Vs

V.J. Sood

RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Constitution of India, 1950 — Article 125, 129, 20
Contempt of Courts Act, 1971 — Section 12, 12(1), 2
Criminal Procedure Code, 1973 (CrPC) — Section 5(2)
Oaths Act, 1969 — Section 5

Citation : (1999) CriLJ 4699 : (1999) 2 GLT 510

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B.P. Katakya and R. Sarma, for the Appellant; S.N. Bhuiyan and N. Islam, for the Respondent

Judgement

J.N. Sharma, J.—This is an application u/s 12 of the Contempt of Courts Act read with Article 215 of the Constitution of India. This application of Contempt has been filed by 29 persons against one Shri V.J. Sud, the Regional Director, Oil and Natural Gas Commission, Eastern Region. It is submitted that Respondent No. 1 in the mean time has retired. The next alleged contemner is Shri C.B.P. Sainy, the General Manager, Oil and Natural Gas Commission, Dhansiri Valley Project, Bishnu Bhawan, Jorhat. The third alleged Contemner is Shri K.K. Sarma, the Deputy General Manager, Oil and Natural Gas Commission, Dhansiri Valley Project, Bishnu Bhawan, Jorhat.

2. The brief facts are as follows :-

That there was a Reference being No. 1(C) of 1989 before the Industrial Tribunal, Guwahati; Assam by one union represented by the Secretary, D.V.P. Jorhat and the petitioners are members of that Union. The Industrial Tribunal, inter alia, arrived at the following finding and gave an award as follows :-

Therefore I find management of O.N.G.C., Dhansiri Valley Project is not justified

in not regularising the services of all the concerned workmen.

2. Services of all 264 workers are to be regularised by O.N.G.C. Dhansiri Valley Project, Jorhat."

3. The award was given on 12th day of March, 1991. As against that award a Civil Rule was filed by the Management being Civil Rule No. 4375 of 1991. The Union also filed another Civil Rule being Civil Rule No. 1907 of 1988. That was earlier to the award and this Court kept that Civil Rule pending and as the award was given in favour of the Union, that Civil Rule was disposed of and Civil Rule No. 4375 of 1991 was dismissed. That Judgment was passed on 5-9-1993. As against that one SLP was filed before the Apex Court and that was dismissed on 25-2-1994 and the award assured finality for all purposes. Earlier to this another Contempt petition being C.O.P. (C) No. 397 of 1994 was filed before this; Court by the Union and that Contempt petition came up for hearing on 15-7-1996 and this Court accepted the explanation given by the Management and accordingly it was held that no case for disobedience and deliberate violation of the, order of this Court is made out and that was closed. This Contempt petition has been filed by this 29 persons on 9-5-1995, before disposal of the other; contempt petition, it would have been proper, if, both the Contempt petitions would have been taken together. But that was not done. Hence, this Contempt petition has come up for hearing after disposal of the other contempt petition.

4. The grievances of the petitioners are that the award was not complied with, that is, their, services have not been Regularised though they are entitled to the benefit in terms of the award; affirmed by this Court and also affirmed by the Apex Court. In paragraph 3 it has been stated "That the management of the O.N.G.C. thereafter filed a Writ Petition being Civil Rule No. 4375 of 1991 before the Hon"ble Court challenging the said award dated 12-3-1991 passed by the Industrial Tribunal, Guwahati wherein the management was directed to regularise the services of all the concerned 264 Casual workers which includes the present petitioners also."

5. In paragraph 6 it has been stated "That the petitioners stated that when they came to know about the move of the Association of depriving them for getting their services regularised in terms of the award passed by learned Industrial Tribunal as well as the judgment and order passed by this Hon"ble Court and which was upheld by the Hon"ble Supreme Court, the present petitioners enquired the same and obtained copies of the writ petition as well as the affidavits, contempt petition and also judgment and order passed by this Hon"ble Court. The petitioners came to know from the judgment passed by this Hon"ble Court that this Hon"ble Court in its judgment dated 5-9-1993 passed in the said Civil Rule has quoted a portion of affidavit in opposition filed by the Association wherein it has been stated falsely that 37 workers left their jobs getting appointment elsewhere which includes the present petitioners also, with a view to deprive the present petitioners from getting their services regularised in terms of the award passed by the learned Industrial Tribunal as well as Judgment and

order passed by this Hon"ble Court in the said Civil Rules, for the differences of opinion regarding the Union activities with the office bearer of the said Association."

6. The Union also earlier filed affidavit in the Civil Rule highlighting this, but that was not accepted by the Court it was ignored and it was held that these 37 workers are entitled to the benefit of the award and accordingly this Court did not accept" that contention of the management. In paragraph 6 of that Judgment in the Civil Rule that aspect of the matter has been noted. In paragraph 6 wherein a plea was taken that 37 workers left their job getting appointment elsewhere and as such 200 casual workers members of the respondent No. 2 are yet to be regularised. This Court did not find any perversity in the Judgment of the Tribunal and accepted that all the 264 workers are to be regularised. In paragraph 6 of the Contempt petition it has been stated that the contempt petition had to be filed by the individual workers inasmuch as when the management of the O.N.G.C. informed them that the Association is not taken up their cases and in a contempt petition being C.O.P. (C) No. 373 of 1994 filed by the Union stating that 37 casual workers left their jobs getting appointment elsewhere which includes the present petitioners also. Again it is stated in paragraph 6 that this stand taken by the management was nothing but an attempt to deceive the petitioners. In paragraph 7 it has been stated, inter alia as follows:- "Taking the advantage of their illegal action the O.N.G.C. is now contemplating not to regularise the services of the petitioners and the Association also played to the tune of the management because of the differences of opinion regarding the Union matters as stated above. The petitioner, therefore, are compelled to file this separate contempt petition before this Hon"ble Court for wilful disobedience and violation of the direction of the Hon"ble Court by the management of the O.N.G.C."

7. In paragraph 12 it has been stated "That the petitioners state that the action of the contemnors is not absorbing and not regularising the services of the petitioners in the Oil and Natural Gas Commission amounts to wilful disobedience of judgment and order passed by this Hon"ble Court dated 5-9-1993 which amounts to contempt of this Hon"ble Court."

8. An affidavit in opposition has been filed by Shri V.J. Sud, the alleged contemner No. 1. Another affidavit has been filed by Shri C.B.P. Sainy, alleged contemner No. 2 and third affidavit has been filed by Shri K.K. Sarma, alleged contemner No. 3. The contentions of the affidavit in opposition are almost the same and as such discussion of one affidavit will be sufficient.

9. I have heard Shri B.P. Katakya, learned Advocate for the petitioners and Shri S.N. Bhuiyan, assisted by Sri N. Islam, learned Advocate for the alleged contemnors. Before we proceed further one thing we should bear in mind that Civil Contempt consists basically failure of a person to comply with an order of the Court. A single Judge of this Court pointed out in paragraph 12 of (1995) 3 Gauhati LR 169 (Ranjit Kumar Dev v. Siv Sankar Misra, as follows :-

12. This matter relates to civil contempt and civil contempt consists basically on failure of a person to comply with an order of the Court. Rules of civil contempt are concerned to uphold the effective administration of justice. If the orders of the Court are not enforced, the order of the Court shall be mere a scrap of papers. As pointed out long back by a Chief Justice of the States Lord Chief Justice Mekean "the question seems to resolve into this, whether a person shall bend to the law or the law shall bend to the person, it is the duty of the Court to determine that the former shall be the case". The rationale of both criminal and civil contempt is essentially same, upholding the effective administration of justice. If a Court lacked the means to enforce its orders and if the orders could be disobeyed with impunity, not only would individual litigants suffer, the whole administration of justice would be brought into disrepute. The famous English saying is "There is no greater crime than contempt and disobedience, for all persons within the Realm ought to be obedient to the King and within his peace."

Disobedience of the orders of the Court in order to amount to civil contempt must be wilful. Proof of mere disobedience is not sufficient *S.S. Roy Vs. State of Orissa and Others*, *Indian Airport Employees Union Vs. Ranjan Chatterjee and another*, .

10. The question of Contempt and its different facets came up for consideration also in a recent decision of the Apex Court reported in *Supreme Court Bar Association Vs. Union of India and Another*, wherein the Supreme Court in paragraph 25 has pointed out that in case of Civil Contempt where the matter is dealt with under Sub-section (1) of Section 12 of the Contempt of Courts Act only a contemner may be punished with simple imprisonment by detention in a civil prison (2) with fine (3) or with both. The question was also considered by the Supreme Court whether some other punishment may be given by the High Court under Article 215 of the Constitution of India or by Supreme Court under Article 129 of the Constitution. The Supreme Court in paragraphs 31, 33 and 34 has pointed out as follows:-

31. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and that is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined, if the order of any Court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the Court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord tenant dispute.

Apart from punishing the contemner the Court to maintain the Majesty of Law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise, (ii) by fixed period of simple imprisonment or detention in a civil prison for a specified period or with (iii) both.

33. In deciding whether contempt is serious enough to merit imprisonment, the Court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment in a given case would be appropriate.

34. The nature and type of punishment which a Court record can impose in a case of established contempt, under the common law have now been specifically incorporated in the Contempt of Courts Act, 1971 in so far as the High Courts are concerned and therefore to the extent of Contempt of Courts Act, 1971 identifies the nature or type of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed.

11. In paragraph-30 the Supreme Court pointed out as follows:-

39. The Contempt of Court is a special jurisdiction to be exercised sparingly and with caution, whatever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the Majesty of law or dignity of the Courts. It is an unusual type of jurisdiction combining "the jury, the Judge and the hangman" and it is so because the Court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of community it is imperative that the authority of Courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the Courts. No such act be permitted which may have the tendency to make the public confidence in the fairness and impartiality of the administration of justice.

12. It is in this background of law as indicated above that we must decide in this particular case and to find out whether the persons are guilty of contempt of Court. As the alleged contemner No. 1 has already retired from service I do not want to proceed in the matter against him. But with regard to Contemnors Nos. 2 and 31 find that they have tried to give an explanation to cover their deliberate failure to comply with the order which cannot be accepted to be bona fide. Failure to comply with an order where it is possible to comply. But it is not done to gain some unlawful advantage, the presumption would be that infringement or disobedience was wilful *Monoharlal Vs. Sri Prem Shankar Tandon and Others*, .

Order of all the Courts of law are to be implemented and acted upon with promptitude. If it is not implemented by giving a twist to it or reading something which is not there in the order that would amount to showing scant respect to the order of the Court and that would obviously be a Contempt of Court. In the garb of their explanation it appears that they are wilfully and deliberately violating the order of this Court's judgment affirmed by the Apex Court. In the affidavit in opposition in paragraph 6 it is stated as follows :-

6. That, with regard to the statement made in paragraphs 9 and 10 the deponent states that after receipt of information regarding dismissal of the SLP by the Hon"ble Supreme Court of India on 25-2-1994 the process of implementation of the award of the Tribunal was promptly started and total number of 153 workers who continued in service were given appointments after complying with procedural formalities including identification of the individual in relation to the award of the Tribunal. The list of so called 264 persons is inclusive of repetition of same names and one missing serial number. The remaining (including the petitioners) had either left contractual jobs or died. The implementation of the award of the Tribunal would be clear from the following statement:-

(A) Number of persons appointed in normal recruitment process during the pendency of cases before the Tribunal and High Court - 35 (B) Number of persons who were absorbed in pursuance of the Award. - 153 (C) Number of persons who left service during pendency of the case before Tribunal (including 29 petitioners and 4 who died). - 69 (D) Repetition of names - 6 (E) Missing serial number (SI. No. 232) - 1 ----- 264 The list of 264 persons with present position and a separate list of 69 persons who either left their jobs or died are enclosed herewith and marked as Annexures A and B to this affidavit.

The implementation of the Tribunal Award as aforesaid was done after examination of the case thoroughly by the Headquarters of ONGC and the decision of the Hqrs. was implemented by the Regional Authorities at Nazira. The petitioners could not be absorbed as they left contractual jobs with ONGC on their own long back. It may be stated that the representation (Annexure C of the Contempt petition) was not from the present petitioners.

13. No liberty was given to the authority to leave out persons from being regularised who may have left their job. The direction was very specific to regularise the services of 264 workers and the authority had no power to give a new twist to the award affirmed by this Court and affirmed by the Apex Court. If that is allowed, that will mean rewriting the judgment and that cannot be done by any authority. Judgment must be adhered to, it must be followed in toto. If a particular Judgment is not possible to be implemented, there will be no contempt inasmuch as a person cannot be expected to do a thing which is impossible and in such a situation no question of wilful and deliberate violation will arise. If any authority wants to flout the judgment by giving its own interpretation that will be an end to the Rule of law and Court must not allow it or must not encourage such a thing. Further save and except the statement in the affidavit in opposition

no record has been produced to show/establish the plea of these persons leaving the job. In the Civil Rule 4375/91 in the affidavit in opposition Annexure 1 contains the name of the petitioners. In para 8 of the Contempt petition there is a categorical statement that they are working. Further these persons are casual employees and as ONGC. was not providing them work, not to face death by way of starvation they are bound to work somewhere, but that will not wipe out their entitlement under the award, as in spite of that aspect being brought to the notice of the Court, the Court ignored it.

14. Shri Bhuiyan advances two contentions :-

(i) That earlier Contempt petition was closed by this Court, there cannot be a second contempt petition. I am not impressed with this argument for the following.

(ii) It is the specific case of the petitioner that the Union in collusion with the Management tried to deceive the labourers by not regularising their services and an affidavit was filed in the Civil Rule itself, where this aspect was ignored. Further as pointed out by the Supreme Court in Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others, when the patent dishonesty on the part of a litigant writ large on the face of the record, the law does not require that the Court should sit back with folded hands and fail to take any action in the matter. A contempt is not an offence within the meaning of Section 5(2), Cr.P.C. nor is the Contemner an accused within the meaning of Section 5 of the Oaths Act or within the meaning of Article 20, sub-clause (3) to attract the provision of loss of second prosecution. Contempt proceedings are neither civil nor criminal but "sui generis" Ch. Shyam Sunder Vs. Daw Dayal Khanna,). The bar of a second suit on the same cause of action as provided in C.P. C. shall not apply to a Contempt proceeding. No doubt the Court must take abundant caution not to make it a tool of harassment or oppression.

(iii) The next contention is that there was no wilful and deliberate violation of the orders. If a person avoids or neglects to do something which he is commanded to do that also will amount to wilful disobedience. This contention cannot be accepted. Accordingly I find both the Contemnors Nos. 2 and 3 are guilty of contempt and I sentence each of them to simple imprisonment for a period of one month with a fine of Rupees 1000/- each, in default for a further period of 15 days. But I make it clear that even now if the persons guilty complied with the order of this Court by doing the needful by regularising the services of the petitioners within one month. In that event the sentence which has been passed shall stand cancelled. This opportunity I give in order to allow the contemnors an opportunity to purge the contempt.

(2) This sentence shall be suspended for a period of 6 weeks from today enable the two contemnors to file appeal, before the Division Bench within a period of 6 weeks. The Registrar (General) shall not issue Warrant for this period. But after expiry of the period of 6 weeks the Registrar (General) subject to order by

Division Bench shall issue Warrant of Arrest under Rule 20 of the Gauhati High Court Rules (Contempt of Courts Act), 1971 for their detention in prison to serve the sentence.

15. Section 2(b) Contempt of Courts Act, 1971 defines Civil Contempt, it means wilful disobedience. The question to be considered is whether from proved facts wilful disregard of the order of the Court can be held to be established. Contempt commonly consists in a party's doing otherwise than he is enjoined to do or not doing what he is required by the process or order of the Court. An order cannot be ignored or set at naught by adopting an genuine approach. Here in this case there was a simple direction to regularise the service of workers and the contemnors are flouting it as will be seen from the para of the affidavit in opposition quoted above. Wilful even means failure to do something when it was within his capacity to do it.