

(2012) 07 DEL CK 0248

In the Delhi High Court

Case No : CONT.CAS (C) . 292 of 2007

All India Itdc Workers Union (Regd) and Others

APPELLANT

Vs

Mr. B.K. Sinha and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 14, 16, 21, 39(d)
Contempt of Courts Act, 1971 — Section 12, 2(b)

Citation : (2012) 191 DLT 201

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Maninder Acharya with Mr. Yashish Chandra, for the Appellant; B.B. Sawhney with Mr. Sunil Kumar and Mr. Amit Seth, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—A Petition (Writ Petition (C) No.6707/2000) was preferred by the Petitioners alleging inter alia that they were employed as Cashier-cum-Sales Assistant on contractual basis by the Respondent Indian Tourism Development Corporation (ITDC) on the Duty Free Shops at Indira Gandhi International Airport at Delhi. The Respondent ITDC was running Duty Free Shops at Mumbai, Calcutta, Chennai and Trivandrum Airports as well. It was averred that the activities of the Duty Free trade carried out by the Respondent ITDC was of regular and perennial nature, yet the Petitioners were employed on contract basis from various dates as mentioned in para 4(iii) of the Petition and the contract of employment was being extended from time to time. It was pleaded that the ITDC's action in not treating the Petitioners as regular employees was arbitrary, illegal and unconstitutional and violative of Articles 14, 16, 21 and 39(d) of the Constitution of India. They made the following prayer:-

In view of the facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to order appropriate writ(s) and/or

order(s) against the respondent to:

- (i) Declare the action of the respondent in terming the petitioners No.2 to 18 as contractual Cashier-cum-Sales Assistants as arbitrary and discriminatory;
- (ii) Declare that the petitioners No.2 to 18 are entitled for payment of their annual increments like other fellow employees;
- (iii) Declare that the petitioners No.2 to 18 continue to be in regular employment under the respondent as Cashier-cum-Sales Assistants with consequential benefits;
- (iv) Award the cost of this petition in favour of the petitioners herein and against the respondent;
- (v) May also pass any further order(s) as be deemed just and proper to meet the ends of justice.

Along with the Writ Petition (C) No.6707/2000, an Application u/s 151 CPC was filed by the Petitioners seeking interim relief against the termination of their services before the end of their contractual employment as they (the Petitioners) apprehended that the Respondent (ITDC) might be prejudiced by filing of the Petition against them.

2. The learned Single Judge of this Court while issuing notice to the Respondent(ITDC) to show cause as to why the Petition be not admitted, directed the Respondent to maintain status quo. During pendency of the Petition, CM. No.1061/2007 was preferred by the ITDC on 17.01.2007 for disposal of the Writ Petition as having become infructuous and/vacation of the status quo order dated 27.11.2000 on the ground that on 30.06.2006 the successor in interest of International Airport Authority of India i.e. M/s. Delhi International Airport Pvt. Ltd. (DIAL) entered into a fresh licensing agreement with the ITDC for running Duty Free Shops till 31.12.2006. By a communication dated 28.11.2006 DIAL called upon ITDC to wind up its operations and hand over possession of Duty Free Shops at the Indira Gandhi International Airport (IGI Airport) by the closing hours of 31.12.2006. Subsequently, time was extended up to 18.01.2007 to remove its belongings and hand over possession. Letter dated 28.11.2006 written by DIAL to the Vice President of the Respondent (ITDC) is extracted hereunder:

November 28, 2006

To,

Mr. N.K. Piplani,

Vice President,

India Tourism Development Corporation Ltd.,

Ashok International Trade Division,

Jeeven Vihar, 5th Floor,
3, Sansad Marg,
New Delhi-110001

Dear Mr. Piplani,

Kindly refer to your letter no.AITD/DIAL/2006, dated 13th November, 2006, seeking an extension of the license for operation of the duty free shops beyond 31st December, 2006, the date of expiry of the licence.

At the outset we state that there is no provision for extension of the above license under the license agreement dated 30th Jun3, 2006, entered into between Delhi International Airport Private Limited ("DIAL") and M/s India Tourism Development Corporation Limited("ITDC") and in any case we express our inability to extend the license term.

You are aware that the bids were invited by DIAL for the duty free shops operation at airport with effect from 1st January, 2007 wherein ITDC also participated. Pursuant to the bidding process, the license has already been awarded to the successful bidder, with effect from 1st January, 2007.

In view of the above, we request you to wind up your operations and remove all belongings of ITDC from the licensed premises by the closing hours of 31st December, 2000.

3. By a communication dated 28.12.2006, the period was extended for the shops run by ITDC from 04.01.2007 to 18.01.2007.

4. An Application for early hearing filed by the Respondent was dismissed, and the Application dated 17.01.2007 for vacation of the status quo order remained pending.

5. Sometime in April, 2007, possession of the Duty Free Shops was handed over to DIAL. The Petitioners were not permitted to enter the IGI Airport and to mark their attendance. The Petitioners, therefore, contend that the status quo order dated 27.11.2000 has been violated by the Respondent ITDC and its officers Respondents No.1 to 3. A Contempt Petition u/s 12 of the Contempt of Courts Act, 1971 (the Act) has been filed giving the background of filing of the main Petition. The Respondents filed an Application for vacation of the status quo order and disposal of the Writ Petition. In the Contempt Petition, the Petitioners dispute the closure of the operation by the ITDC as on 17.01.2007. It is, however, nowhere pleaded that after the termination of their employment, the Duty Free Shops was being run by the Respondent ITDC.

6. The Respondent contested the Contempt Petition on the ground that the Petitioners engagement for a fixed duration was till the expiry of the licence granted by the International Airport Authority of India. The contractual employment was being extended from time to time. The Respondent relied on a

copy of the licence agreement dated 30.06.2006. The Respondents stated that ITDC was unsuccessful bidder for obtaining the Duty Free Shops at the Indira Gandhi International Airport w.e.f. 01.01.2007 in view of the expiration of the contract with the International Airport Authority of India (taken over by DIAL) and the contractual appointments of the Petitioners came to an end. It was thus disputed that the Respondents violated the status quo order dated 27.11.2000 granted by the learned Single Judge.

7. It is urged by the learned counsel for the Petitioners that the Respondent ITDC was unsuccessful in obtaining vacation of the status quo order dated 27.11.2000. Thus irrespective of the circumstances under which the status quo order was passed, the same ought to have been complied with by the Respondent. Since the Petitioners employment was terminated in violation of the order dated 27.11.2000, the Respondents are guilty of willful and contumacious disobedience of the order dated 27.11.2000 and are liable to be punished u/s 12 of the Act. Reliance is placed on a report of the Supreme Court in S. Nagaraj and Others Vs. State of Karnataka and Another,

8. On the other hand, the learned counsel for the Respondents contends that the status quo order has to be interpreted in view of the facts of the case and prayer made. In the Application u/s 151 CPC, the averments were that the Petitioners have been issued appointment till December, 2000 and the Respondents may be restrained from terminating the services of the Petitioners and directed to maintain the status quo. I would like to extract the Application u/s 151 CPC dated 23.10.2000 hereunder:

APPLICATION u/s 151 OF C.P.C.,1908 PRYING FOR EX PARTE AD-INTERIM STAY
MOST RESPECTFULLY SHOWETH:

1. That the petitioners have filed the aforesaid Civil Writ Petition before this Hon''ble Court and the same is pending hearing by this Hon''ble Court. The Petitioners seek leave of this Hon''ble Court to read and rely upon the facts and submissions there in the Civil Writ Petition as part and parcel of this petition as well. The same are not repeated for the sake of brevity.

2. That the petitioners had bona fide apprehension that the respondent may proceed with the arbitrary termination of the petitioners No.2 to 18 though they have issued the appointment till December, 2000 because of the petitioners having approached this Hon''ble Court seeking its indulgence.

3. That the Petitioners have a good prima facie case in their favour and the balance of the convenience also lies in their favour.

4. That unless the respondent is restrained from terminating the services of the petitioners No.2 to 18 and directed to maintain the status quo pending final hearing of the accompanying writ petition, the said writ petition shall become infructuous and the petitioners No.2 to 18 would face tremendous hardships and agonies.

PRAYER

In view of the facts, it is most respectfully prayed that pending final hearing of the writ petition, this Hon"ble Court be graciously pleased to:

- (i) grant ex parte ad-interim order restraining the respondent terminating the services of the petitioners No.2 to 18 and direct the respondent to maintain the status quo as regards the posting of the petitioners;
- (ii) order issuance of Show Cause Notice of this application to the Respondent;
- (iii) confirm the same after hearing the parties;
- (iv) the petition may also be disposed of at admission stage after hearing the parties; and
- (v) may also pass any further order(s) as be deemed just and proper to meet the ends of justice.

9. The order passed by the learned Single Judge dated 27.11.2000 is extracted hereunder:

27.11.2000

Present: Mr. A.S. Singh for the Petitioners.

CW No.6707/2000 & CM 10276/2000

Issue notice to the Respondent to show cause why the petition be not admitted, returnable on 30th January, 2001 before the Joint Registrar who will list the matter before Court after service is complete.

In the meanwhile, the Respondent will maintain status quo.

Dasti.

Sd/-

Madan B. Lokur Judge

27th November, 2000

10. It is important to note that the main Writ Petition was transferred to Central Administrative Tribunal(CAT) pursuant to the Notification issued by the Central Government vide Notification No.SO(E) dated 01.12.2008 by this Court on 05.02.2009 and the same came to be dismissed by the CAT by an order dated 29.01.2010. I am not concerned with the dismissal of the main Petition as in this Petition what is required to be seen whether there was willful disobedience of the order dated 27.11.2000.

11. The Petitioners were initially appointed during the period 1994 to 1996 in pursuance of the advertisement issued in national dailies. One such advertisement is available on page 148 of the compilation of the main Writ

Petition filed by the Petitioners. From the advertisement, it is evident that the Respondent ITDC sought applications for appointment of Sales Assistant at Duty Free Shops at International Airport Sahar Bombay and Indira Gandhi International Airport, New Delhi. It was mentioned that the employment will be co-terminus with the licence given by the International Airport Authority of India which was valid at that time to 31.05.1996. In the appointment letter issued to the Petitioners, it was specifically mentioned that the period of the contract was up to the date of expiry of the licence or the period of employment, whichever was earlier. In *Bharat Coking Coal Limited Vs. State of Bihar and Ors*, the Supreme Court observed that the expressions "status quo" is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. According to the ordinary legal connotation, the term "status quo" implies the existing state of things at any given point of time. A Division Bench of Karnataka High Court in *N. Ramaiah v. Nagaraj S. & Anr.*, AIR 2001 Karn 395 while relying on *Bharat Coking Coal (supra)* held that the Court, while making an order to maintain status quo are entitled to clarify the conditions in the context of which or subject to which the status quo order has been issued. Paras 20 to 22 of the report are extracted hereunder:

20. We may at this juncture advert to the confusion caused by orders directing status quo. The parties are (or a party is) normally directed to maintain status quo in regard to a property, so that the position does not get altered or become irreversible pending decision in the suit or legal proceeding. The term "status quo" means the "situation that currently exists" or the "existing state of things at any given point of time." The Supreme Court in *Bharat Coking Coal Limited Vs. State of Bihar and Ors*, has recognized the fact that "the expression" "status quo" is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty.

21. The Court while making an order to maintain status quo, should endeavour to clarify the conditions, in the context of which or subject to which, such direction is issued, as the words status quo takes contextual meaning and may give room for several and different interpretations. Let us illustrate.

Illustration(i):

If a person puts up a construction in his site violating the set back requirements and if the owner of a property approaches the Court seeking an injunction restraining the adjoining owner from proceeding with the construction in violation of building bye-laws and the Court orders status quo, the order may mean that no further construction shall be made and the construction shall be maintained in the same position as on the date of the order.

Illustration (ii):

If a member of a joint family files an application seeking an injunction in a suit for partition, restraining the kartha from alienating the joint family property and the Court grants an order of status quo, it may mean that the defendant should

not alienate the property.

Illustration (iii):

If a plaintiff seeks an injunction restraining the defendant from harvesting a crop in the suit land and the Court orders status quo, it may mean that defendant should not harvest the standing crop.

Illustration (iv):

In a service litigation, if the employee seeks a direction to employer not to terminate his services and the Court directs defendants to maintain status quo, it may mean that defendant should not terminate the service of the employee.

22. An order of status quo is a specie of interim orders, when granted indiscriminately and without qualifications or conditions, leads to ambiguity, difficulties, and injustice. If courts want to give interim relief, they should endeavour to give specific injunctive relief. If grant of order of "status quo" is found to be the only appropriate relief, then Courts should indicate the nature of status quo, that is whether the status quo is in regard to possession, title, nature of property or some other aspect. Merely saying "status quo" or "status quo to be maintained" should be avoided. If in a suit for injunction, where plaintiff claims that he is in possession of the suit property and the "defendant is attempting to interfere with his possession, and the defendant contents that he is in possession and petitioner was never in possession. If the Court merely directs status quo to be maintained by parties, without saying anything more, it will cause confusion and in many cases even lead to breach of peace. On the basis of such order, the plaintiff would contend that he is in possession and he is entitled to continue in possession; and the defendant would contend that he is in possession and he is entitled to continue in possession. In such a case, if the Courts wants to direct status quo, it should specify the context in which or conditions subject to which, such status quo"- direction is issued.

12. I have already extracted earlier the Application u/s 151 CPC seeking an ad-interim injunction. It was clearly mentioned in the Application that the Petitioners have been issued appointments till December 2000. It was further mentioned that their appointments may be terminated because the Petitioners had approached the Court with the Writ Petition (C) No.6707/2000. Thus there could be two interpretations of the status quo order vis-?-vis the prayer if I see the averments made in the Application u/s 151 CPC, it would convey a meaning that the Petitioners could be terminated from their services before their contractual appointment would come to an end in December, 2000. The other interpretation vis-?-vis the main Petition would be that they sought regularization of their services and hence the status quo meant that their services cannot be dispensed with till the further orders of the Court.

13. It is true that an order of a competent Court even though innocuous, mistaken or improperly obtained has to be complied with, unless the same is

varied. It is well settled that for holding a person guilty of committing of contempt of the Court, there has to be willful and contumacious violation of the order passed by the Court. Moreover, the powers under the Act must be used with utmost care and caution. In *Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others*, the Supreme Court in paras 13 to 15 of the report stated thus:

13. Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. The Contempt of Courts Act, 1971 has been introduced in the statute-book for the purpose of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country- undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute. The observation as above finds support from a decision of this Court in *Chhotu Ram Vs. Urvashi Gulati and Another*, wherein one of us (Banerjee, J.) stated as below:

2. As regards the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt.

14. Similar is the situation in *Mrityunjoy Das and Another Vs. Sayed Hasibur Rahaman and Others*, and as such we need not dilate thereon further as to the burden and standard of proof vis-?-vis the Contempt of Courts Act- suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.

15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971- the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation- the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the willful nature of the conduct if raised, question of success in a contempt petition would not arise.

14. It has to be borne in mind that the jurisdiction to initiate proceedings to

punish contempt is discretionary. The Court has to weigh the facts and circumstances of each case to form an opinion whether it would be appropriate to have resort to the Act to punish the alleged contemnor. In *Muthu Karuppan Vs. Parithi Ilamvazhuthi and Another*, the Supreme Court held as under:

Jurisdiction to initiate proceedings for contempt as also the jurisdiction to punish for contempt are discretionary with the court. Contempt generally and criminal contempt certainly is a matter between the court and the alleged contemnor. No one can compel or demand as of right initiation of proceedings for contempt. The person filing an application or petition before the court does not become a complainant or petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the court. It is thereafter for the court to act on such information or not.

15. I have already observed earlier that if I see the averments made in the Application u/s 151 CPC for grant of status quo, the Petitioners prayer was that they were contractual employees only till 31.12.2000 and that their services could be terminated earlier because of filing of the Petition. Of course, as mentioned earlier, the other interpretation was also possible.

16. The Petitioners continued in service of the Respondent ITDC till 26.04.2007. In other words, the period of their contractual employment was also extended from time to time till the Respondent's licence to run the Duty Free Shops was revoked and the licence was granted in favour of another person. In the circumstances, apart from the fact that two views were possible of the status quo order, it would be difficult to say that there was a willful or contumacious defiance to the Court order in not engaging the Petitioners beyond 26.04.2007. In *Ashok Paper Kamgar Union and Others Vs. Dharam Godha and Others*, intervention of the third party was required to carry out the order passed by the Court. The Supreme Court held that in the circumstances, the Respondents were not guilty of the contempt of Court. Paras 15 to 17 of the report are extracted hereunder:

15. In accordance with the orders passed by this Court in the writ petition, a tripartite agreement had to be entered into between the petitioner, namely, Ashok Paper Kamgar Union, Government of Bihar and NCFL. The material on record shows that through several meetings were held, but for some reason or the other, the agreement could not fructify and could not be signed. Shri H.C. Sirohi, Labour Commissioner, Bihar, wrote a letter to the Secretary, Industrial Development Department, Government of Bihar on 29.1.1998 complaining that the behaviour of the President of the petitioner Union had been non-cooperative on many occasions. He frequently tried to create hindrances and showed no interest to reach a settlement for tripartite agreement. He sent another letter in this connection on 4.5.1998 reiterating that Shri Umadhar Prasad Singh, President of Ashok Paper Kamgar Union was creating hurdles in arriving at a tripartite agreement. The Labour Commissioner also sent a report that his Department had been receiving representations from Ashok Paper Mill Mazdoor

Panchyat, which was the only recognized union, about their claim. After considering the report of the Labour Commissioner, the Government of Bihar gave its no-objection by its letter dated 14.7.1998 and thereafter the management entered into an agreement with the aforesaid recognized union, namely, Ashok Paper Mill Mazdoor Panchyat. In paras 13 and 17 of the contempt petition, it is alleged that on account of keeping out of the petitioner and its President (Shri Umadhar Prasad Singh) from the meetings of the Monitoring Committee and on account of their non-involvement in the opening and running of the unit, there has been a disobedience of the orders passed by this Court. The material on record shows that as Shri Umadhar Prasad Singh was not cooperating and was creating hindrance in arriving at a tripartite agreement, the Labour Commissioner wrote to the Government of Bihar for signing of the agreement with Ashok Paper Mill Mazdoor Panchayat, which was a recognized union. The Government of Bihar also gave its consent for the same. In these circumstances, the fact that the agreement was signed only with Ashok Paper Mill Mazdoor Panchyat cannot amount to willful disobedience of the orders passed by this Court.

16. Under the Scheme which was formulated on 28.6.1996 and had been approved by this Court by the order dated 8.7.1996, NCFL had to pay a fixed consideration of Rs. 6 crores over a period of four years in sixteen quarterly instalments of Rs. 37.5 lakhs each.

NCFL has no doubt defaulted in payment of the aforesaid amount as it has paid only two instalments of Rs. 37.5 lakhs each. IDBI has disbursed a term loan of Rs. 15 crores towards Phase I of the revival scheme. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India in cooperation with the Department of Banking was instrumental in obtaining the sanction for additional term loan of Rs. 11 crores from IDBI and a working capital of Rs. 9.25 crores from United Bank of India. Therefore, so far as IDBI and the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India are concerned, they have complied with the directions issued by this Court and have also taken all other steps which they were required to take for the revival of the unit. According to the affidavit filed by Shri Dharam Dogha, NCFL has invested Rs. 18 crores towards promoter's contribution which was much more than the amount contemplated in Phase I of the Scheme. It is also averred therein that for the loan of Rs. 15 crores given by IDBI, security of properties situated in Mumbai worth Rs. 10 crores, other than that of the mill, had been furnished by NCFL. Though the entire amount of consideration has not been paid by NCFL but they claim to have made substantial investment for running of the unit.

17. Section 2(b) of the Contempt of Courts Act defines "civil contempt" and it means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of undertaking given to a court. "Willful" means an act or omission which is done voluntarily and intentionally and with the

specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad move or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by the Government of India on 28.6.1996 and had been approved by this Court by the order dated 8.7.1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non-inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly not discharged its liability of making payment of its entire liability of Rs. 6 crores. However, it has come out with a case that some additional expenditure has been incurred in running the unit. It is not possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of court on account of alleged non-compliance with the orders passed by this Court on 8.7.1996, 1.5.1997 and 31.7.2000 has been established against any one of the respondents.

17. The Petitioners were contractual employees since the date of their engagements in 1994 to 1996. The Writ Petition was filed in the year 2000. The Petitioners continued with the contractual employment till the ITDC's licence to run the Duty Free Shops was revoked. The Respondent ITDC moved an Application dated 17.01.2007 (CM No.1061/2007) informing the Court that the Writ Petition has become infructuous because of the intervening circumstances i.e. revocation of the licence. Somehow the Application moved by the ITDC could not be decided till 26.04.2007, when the ITDC was required to leave with bag and baggage. In the circumstances, it cannot be said that there was willful disobedience of the status quo order dated 27.11.2000 or that the conduct of the Respondent was contumacious in defying the Court order.

18. In my considered opinion, it is not a case where the Court should exercise its power under the Contempt of Court Act to punish the Respondents. The Petition is accordingly liable to be dismissed. I order accordingly. All pending Applications stand disposed of.