

(2023) 05 CAT CK 0034

In the Central Administrative Tribunal

Case No : Modification Application No. 1573 Of 2023 In Civil Contempt Petition
No. 2 Of 2018 In Original Application No. 1089 Of 2007

Amit Chauhan

APPELLANT

Vs

Vipin Kumar, HQ Chief Engineer, Air Force Station, Bamruli,
Allahabad

RESPONDENT

Date of Decision : 13-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 05 CAT CK 0034

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Saran Kumar, Himanshu Singh, Anil Kumar

Final Decision : Dismissed

Judgement

Om Prakash-VII, Member (J)

1. Heard Sri Saran Kumar, learned counsel for the applicant and Sri Himanshu Singh along with Sri Anil Kumar, learned counsel for respondents are present.

2. M.A.No 1573/2023 has been filed by the learned counsel for the respondents for modification/ recalling the order dated 19.4.2023 and 27.4.2023 passed by this Tribunal. Vide order dated 27.4.2023, this Tribunal has passed the following orders:-

"Perusal of the order dated 19.4.2023 quoted hereinabove clearly reveals that a statement at the bar was made by the learned counsel for respondents that he will file compliance affidavit. Instead of filing compliance affidavit, time extension application has been filed along with exemption application.

This fact shows the disobedience on the part of the respondents. O.A. was decided on 2.3.2017. More than six years have elapsed. Till date, no compliance has been made. There is no stay order passed in the writ petition pending before

the Hon'ble High Court. Thus, respondents ought to have comply with the directions given by this Tribunal in O.A. NO.1089/2007, subject to outcome of the Misc. Application No. 1573/2023 in CCP No. 2/2018 in O.A. No.1089/2007 writ petition pending before the Hon'ble High Court. Since no compliance has been made even after six years have elapsed, despite specific statement given by the learned counsel for respondents at bar, only time extension application has been moved, thus , we are of the view that it clearly reveals that respondents are willfully disobeying the order passed by this Tribunal as well as defying their statement made before the court. In the interest of justice, one and last opportunity is given to the respondents to file compliance affidavit by the next date fixed in the matter and in case of failure to file the aforesaid compliance affidavit respondents shall appear in person with cost of Rs. 2000/- to explain the reason for noncompliance of the order passed by this Tribunal. The cost shall be paid to the applicant. Authority concern, who is present in person before the court today, will also appear in person on the date fixed in the matter. Accordingly, M.A.No. 1294/2023 and M.A.No. 1295/2023 are disposed off.

List on 17.5.2023."

2. Modification application/ recall application has been filed on the ground that in spite of fixing various dates in the pending writ petition No. 1113 of 2009, against the order passed in O.A, which was listed on 5.4.2023, the said writ petition could not be heard due to long number of cases in daily cause list of Hon'ble High Court. Learned counsel for respondents also relied upon the following case laws:-

- i) Priya Gupta and another Vs. Additional Secretary, Ministry of Health and Family Welfare and others (2013) 11 Supreme Court cases 404
- ii) T.N. Gonavarman Thirumulpad (102) through the Amicus Curiae Vs. Ashok Khot and another (2006) 5 Supreme Court cases 1.
- iii) Securities and Exchange Board of India Vs. Sahara India Real Estate Corporation Limited and others (2014) 5 Supreme Court cases, 429
- iv) Smt. Pushpaben and another Vs. Narandas V. Badiani and another (1979 2 Supreme Court cases 394
- v) Dinabandhu Sahu Vs. The State of Orissa (1972) 4 Supreme court Cases, 761
- vi) Sri Badadakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit 1 Supreme Court cases 446.
- vii) Suresh Chandra Poddar Vs. Dhani Ram and others (2002) 1 Supreme Court cases 766.

3. In the instant case, the O.A. was allowed on 2.3.2017. Contempt petition has been filed in the year 2018. The writ petition has been filed before the Hon'ble High Court in the year 2019. More than 6 years have elapsed from filing of the writ petition. No stay has been granted by the Hon'ble High Court. Vide order

dated 4.1.2023, respondents were directed to file compliance report, otherwise to remain present in person before the Tribunal to explain the cause behind non-compliance of order. On 19.4.2023, Sri Anup Singh, Director Hd.CE (AF), Prayagraj was present and stated that he is ready to comply the order. Again on 27.4.2023, instead of filing compliance affidavit, he submitted that stay application filed by the department is still pending before the Hon'ble High Court and seeks 2 months further time for filing compliance affidavit. On the statement made by the learned counsel for respondents on 19.4.2023, time was granted to the respondents for filing compliance affidavit. Vide order dated 27.4.2023, one and last opportunity was given to the respondents to file compliance affidavit by the next date fixed in the matter and in case of failure to file the aforesaid compliance affidavit respondents shall appear in person with cost of Rs. 2000/- to explain the reason for noncompliance of the order passed by this Tribunal. The cost shall be paid to the applicant. Authority concern, who is present in person before the court today, will also appear in person on the date fixed in the matter and the case was listed for 17.5.2023. Meanwhile, respondents have filed the present modification application/ recall application. On the statement of counsel for respondents, time was granted to them for filing compliance affidavit but they are defying with their statement.

4. In the case of Priya Gupta Vs. Additional Secretary, Ministry of Health and Family Welfare (supra), Hon'ble Apex Court has held as under:-

"31. From these two affidavits, it is in fact clear that both these contemnors are not directly responsible for violating any order or direction of the Court. However, they are expected to exercise proper control and supervision over grant of recommendation, permission to give admission in the colleges and the admission process. The Director General of Health Services, Union of India is responsible for maintaining transparency in the process of admission to the medical colleges. Two things are clear that they ought to Misc. Application No. 1573/2023 in CCP No. 2/2018 in O.A. No.1089/2007 have checked that the State could not have permitted the college to grant admission to the students on or after August 14, 2006 as 15th of July, 2006 was the last date for grant of recognition and permission to run the medical college. Secondly, when the complaint was received, the Ministry as well as the Directorate was expected to act with greater expeditiousness and ought not to have permitted the wrongly granted admissions to continue. In fact, the Government or the Directorate both took no action against the institute, even till date. There is apparent lack of proper supervision and enforcement of the directions issued by this Court on the part of these contemnors.

32. Having considered the entire spectrum of the matter, we are of the considered view that the ends of justice would be met by issuing a warning to both these contemnors and not to punish them with fine or imprisonment. They should be more careful in discharge of their functions and duties in accordance with the judgment of this Court and we further direct them to ensure circulation

of this judgment as well as the judgment of Priya Gupta's case to all the Directors, Health Services of the respective States, Deans of the Universities holding the selection/examination or admission process for MBBS/BDS courses as well as to the Dean of all the colleges.

33. In result of the above discussion, contemnor Dr. S.L. Adile, Amrita Banerjee, Dr. Sanjivani Wanjari, Dr. P.D. Agrawal and Mr. Padmakar Sasane are hereby punished and awarded the sentence of fine of Rs.2,000/- each. The fine should be deposited within four weeks from today. In the event of default, they shall be liable to undergo civil imprisonment for a period of two weeks. The notice of contempt against them is discharged, however, subject to the observations aforemade.

5. In the case of Smt. Pushpaben and another Vs. Aarandas Vs. Badiani and another, Hon'ble Apex Court has observed as under:-

"It is, then, contended that under S. 12(3), normally the sentence that should be given to an offender who is found guilty of civil contempt, is fine and not imprisonment, which should be given only where the Court is satisfied that ends of justice require the imposition of such a sentence. In our opinion, this contention of learned counsel for the appellants is well-founded and must prevail. Sub-section 3 of S. 12 reads thus :-

"Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit".

A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it think that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation Thus, the sentence of imprisonment is an exception while sentence of fine is the rule.

Having regard to the peculiar facts and circumstances of this case, we do not find any special reason why the appellants should be sent to jail by sentencing them to imprisonment. Furthermore, respondent No. 1 before us despite service, has not appeared to support the sentence given by the High Court. Having regard to these circumstances, therefore, we are satisfied that the present case, squarely falls in the first part of S. 12(3) and a sentence of fine alone should have been given by the High Court. We, therefore, allow this appeal to this extent that the sentence of imprisonment passed by the High Court is set aside and instead the appellants are sentenced to pay a fine of Rs. 1000/- each. In case of default, 15 days simple imprisonment. Four weeks time to pay the fine.

6. In the case of T.N. Godavarman Thirumulpad Vs. Ashok Khot (supra), Hon'ble Apex Court has observed as under:-

"While contempt proceedings usually have these characteristics and contempt proceedings against a Government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a Government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a Government department or minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to ensure the orders of the court are obeyed. This jurisdiction is required to be co-extensive with the courts' jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorized Government departments or the Attorney General. On applications for judicial review orders can be made against ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (See M v. Home Office (1993 (3) All ER 537).

This is a case where not only right from the beginning attempt has been made to overreach the orders of this Court but also to draw red-herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have propensity of disregarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month simple imprisonment in each case would meet the ends of justice. It is to be noted that in Re: Sri Pravakar Behera (Suo Motu C.P. 301/2003 dated 19.12.2003) (2003 (10) SCALE 1126), this Court had imposed costs of Rs.50,000/- on a D.F.O. on the ground that renewal of license was not impermissible in cases where licenses were issued prior to this Court's order dated 4.3.1997. That was the case of an officer in the lower rung. Considering the high positions held by the contemnors more stringent punishment is called for, and, therefore, we are compressing custodial sentence.

7. In the case of Dinabandhu Sahu Vs. The State of Orissa (supra), Hon'ble Apex Court held as under:-

"2. After this explanation was given the Appellants say that they had stated before the learned Chief Justice and A. Misra, J. who were hearing the petition that they would not have filed the representation petition had they known all the

circumstances which were explained by the learned Chief Justice and prayed through Mr. Chari appearing on behalf of the opposite party that they may be forgiven. This fact emerges also from the judgment of the learned Chief Justice who in paragraph 57 said that Mr. Chari appearing on behalf of all the opposite parties asked for forgiveness of the Court as he put it publicly in open Court. The other learned Judge A. Misra, J, also stated that this was so and that it was given particularly in view of the strained relations which existed between the rival political parties and which led to some misunderstanding of the whole situation, but he pointed out that except for this the Respondents at no stage have chosen to express any regret or tender apology. The learned Chief Justice also stated that there was nothing in writing either by way of an apology nor has regret been tendered in the Court. Mr. Chari before us pointed out, with some justification that if all that the Court wanted was a written apology by the Appellants there would have been no hesitation in their giving it as the very cause for their apprehension had been removed, by the explanation given by the learned Chief Justice to remove any misunderstanding in the public mind, which misunderstanding no longer existed after that explanation. Though the case was fully argued, even before us the learned Advocate on behalf of his clients made the following statement expressing their apology:

My client had already expressed that the misunderstandings which caused them to file the petition the subject matter of the contempt proceedings had been removed by the explanation given by the learned Chief Justice and stated that if they had known this, they would never have written it. In view of this they had also asked for the forgiveness of the Court out of its generosity. I have, therefore, no hesitation at all in offering unconditional apology on their behalf for having written the petition. On behalf my clients, I again repeat that and tender an unqualified apology for presenting the petition.

The learned Advocate for the State of Orissa Mr. Chatterjee frankly conceded that having regard to this apology which has again been reiterated the proceedings may be dropped. We think that this is a correct and proper attitude to adopt in respect of these proceedings. Whatever may have been the justification for the High Court to initiate the proceedings in respect of a matter, which in the state of the atmosphere then prevailing was likely to create a suspicion, whether justifiable or imaginary, in the public mind and particularly in the mind of the litigants, by the circumstance that a person who is a Respondent in a case where a judgment was reserved was given prominence and referred to in terms of praise or eulogy, that situation had changed after the learned Chief Justice had given an explanation for the reasons why Dr. Mahtab was given a seat among the few selected persons at the Buffet lunch and other matters incidental thereto. The apology tendered was not merely an apology but was something more than an apology because what was asked of the Court out of its generosity was forgiveness; that this was sincerely meant is amply demonstrated by its being repeated again before us We think that the contempt if any has been certainly purged in the manner in which the apology was given and the matter should

have been set at rest there. It is no part of the judicial function to be vindictive or allow any personal or other considerations to enter in the discharge of its functions and since both the learned Chief Justice and Misra, J. would have been prepared to accept that apology if it was given by the Appellants themselves and in writing and since Mr. Chari said that the Appellants would have been prepared to give such an apology in writing, if that was the only thing that was required and even now are ready and willing to do so we feel that the apology tendered on their behalf by their Senior Advocate can well be accepted and the proceedings closed. We accordingly allow the appeals, set aside the convictions and direct the repayment of the fine, if any, and close the proceedings.

8. In the case of *Shri Baradakanta Mishra Vs. Shri Bhim Sen Dixit (supra)*, Hon'ble Apex Court observed as under:-

"After examining the matter further, the High Court said : "The conduct of the condemner far from being bonafide is clearly a malafide one and he intentionally avoided to follow the decision of this Court by advancing grounds which were most inappropriate." On that view of the matter the High Court found him guilty of contempt of court and admonished him in open court and directed him to pay Rs. 300 as costs of the proceedings.

Shri Daphtary, counsel for the appellant, rightly did not seek to support the justification pleas. His argument now is that the appellant is not guilty of contempt of Court, for the sentence in the appellant's order, found objectionable by the High Court, neither interferes with the administration of justice nor scandalises the High Court.

Shri Daphtary as well as the Solicitor-General appearing for the State have stated before us that there is no decided case either in support of or against the argument. But the absence of a precedent should not preclude an act being held to be contempt merely because it is novel or unusual provided it is comprehended by the principles underlying the law of Contempt of Court. The absence of precedent should' however put the court on guard that the area of contempt is not being unduly expanded (Vide 17 Corpus Juris Secundum 21). The present case then is to be decided on principles and analogy.

Contempt of Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a willful disregard or disobedience of the court's order; it also signifies such conduct as tends to bring the authority of the court and the administration of law into, disrepute. (Vide 17 Corpus Juris Secundum pages 5 and 6; Contempt by Edward N. Dangel (1939 Edn.) page 14. Oswald's Contempt of Court (1910 Edn.) pages 5 and 6). It is a commonplace that where the superior court's order staying proceedings is disobeyed by the inferior court to whom it is addressed, the latter court commits contempt of court for it acts in disobedience to the authority of the former court. The act of disobedience is calculated to undermine public respect for the superior court and jeopardise the preservation of law and order. The appellant's case is to

be examined in the light of the foregoing principles and analogy.

The remark in the appellants order found objectionable by the High Court is this : "Further, against the order we have moved the Supreme Court, and as such the matter can be safely deemed to be subjudice." It may be observed that on the date of the order nothing was pending in the Supreme Court; only a petition was pending in the High Court for a certificate to appeal to the Supreme Court from the decision in Bhramarbar Santra. (1) The appellant has thus made a wrong statement of fact. Secondly, the use of .the personal pronoun "We" is also significant. It indicates that the appellant identified himself as a litigant in the case and did not observe due detachment and decorum as a quasi judicial authority. Lastly, we agree with the High Court that it is not possible to believe that the appellant could have entertained the view that as soon as a petition for certificate to appeal to the Supreme Court was filed in the High Court against its decision, the binding character of the decision disappeared. He has 23 years' judicial experience and he could scarcely entertain that belief. We agree with the High Court that the appellant deliberately avoided to follow its decision by giving wrong and illegitimate reasons and that his conduct was "clearly mala fide".

Under Art. 227 of the Constitution, the High Court is vested with the power of superintendence over the courts and tribunals in the State. Acting as a quasi judicial authority under the Orissa Hindu Religious Endowments Act, the appellant was subject to the superintendence of the High Court. Accordingly the decisions of the High Court were binding on him. He could not yet away from them by adducing factually wrong and illegitimate reasons. In East India Commercial Co. Ltd. Calcutta and Another v. The Collector of Customs, Calcutta(1) Subba Rao J. observed :

"The Division Bench of the High court held that a contravention of a condition imposed by a licence issued under the Act is not an offence under s. 5 of the Act. This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercise jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court. making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform

to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

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The conduct of the appellant in not following the previous, decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. Ms conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and malafide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law 'and engender harassing uncertainty and confusion in the administration of law.

Our view that deliberate and malafide conduct of not follow-ing the binding precedent of the High Court is contumacious does not unduly enlarge the domain of contempt. It would not stifle a bona fide act of distinguishing the binding precedent, even though it may take out to be mistaken.

As a result of the foregoing discussion, we think that the High Court has rightly found the appellant guilty of contempt. So we dismiss the appeal.

9. In the case of Suresh Chandra Poddar Vs. Dhani Ram and others (2002) 1 Supreme Court cases 766, Hon'ble Apex Court has observed as under:-

"Even if appellant had not implemented the order and if the appellant had brought to the notice of the Tribunal that the order of the Tribunal is under challenge before the High Court under Article 226 of the Constitution of India (the course which has been judicially recognised by a seven Judge Bench of this Court in L. Chandra Kumar v. Union of India and Ors., [1997] 3 SCC 261 the Tribunal should have been slow to proceed against the party in a contempt action. Of course it can be said that no stay was granted by the Court when the appellant moved the Division Bench of the High Court under Article 226 of the Constitution. Not granting the stay by itself is not enough to speed up proceedings against a person in contempt because the very order is yet to become final. At any rate the Tribunal should have directed the appellant to implement the direction, in the absence of the stay order from the High Court, within a time frame fixed by it. We would have appreciated if the Tribunal had done so and then considered whether action should be taken in the event of the

non implementation of the order after the expiry of the said time frame.

We have chosen to say so much in this case to give a message to the Tribunal that contempt jurisdiction is not to be exercised casually but only sparingly and in very deserving cases. It is appropriate to bear in mind the adage "It is good to have the power of giant, but not good to use it always."

10. In the instant case, the O.A. was allowed on 2.3.2017. Contempt petition has been filed in the year 2018. The writ petition has been filed before the Hon'ble High Court in the year 2019. More than 4 years have elapsed from filing of the writ petition. No stay has been granted by the Hon'ble High Court. Vide order dated 4.1.2023, respondents were directed to file compliance report, otherwise to keep present in person before the Tribunal to explain the cause behind non-compliance of order. On 19.4.2023, Sri Anup Singh, Director Hd.CE (AF), Prayagraj was present and stated that he is ready to comply the order. Again on 27.4.2023, instead of filing compliance affidavit, he submitted that stay application filed by the department is still pending before the Hon'ble High Court and seeks 2 months further time for filing compliance affidavit. On the statement made by the learned counsel for respondents on 19.4.2023, time was granted to the respondents for filing compliance affidavit. Vide order dated 27.4.2023, one and last opportunity was given to the respondents to file compliance affidavit by the next date fixed in the matter and in case of failure to file the aforesaid compliance affidavit respondents shall appear in person with cost of Rs. 2000/- to explain the reason for noncompliance of the order passed by this Tribunal. The cost shall be paid to the applicant. Authority concern, who is present in person before the court today, will also appear in person on the date fixed in the matter and the case was listed for 17.5.2023. Meanwhile, respondents have filed the present modification application/ recall application. On the statement of counsel for respondents, time was granted to them for filing compliance affidavit but they are defying with their statement.

11. About 6 years have elapsed from passing of the judgment in O.A. No. 1089/2007. There is no stay order of the Hon'ble High Court in the writ petition pending before the Hon'ble High Court. Sufficient opportunity have been given to the petitioner to comply with the directions given by this Tribunal in the O.A. Recall of order dated 19.4.2023 has already been rejected vide order dated 27.4.2023 by passing a reasoned and speaking order.

12. Hon'ble Apex Court in the case of Collector of Customs Bombay Vs. Krishna Sales Private Limited reported in LAWs (SC) 1993-9-148 as well as decision of Hon'ble High Court in the case of State of U.P. and others Vs. Ved Prakash reported in 2008 (26) LCD 269 and decision of this Tribunal passed in CCP No.23/2007 in O.A. No. 609/2001 has indicated that mere filing of an appeal does not operate as a stay or suspension of the order appealed against as observed by the Hon'ble Apex Court in the case of Collector of Customs, Bombay (supra)..

13. As observed by the Hon'ble Apex Court in the case of H.G. Rangangoud Vs. M/s State Trading Corporation of India limited (supra) that "The order of the learned Single Judge was not stayed. Further, mere filing of the appeal would not operate as a stay of order appealed from."

14. Not only this, in the case of State of U.P.Vs. Ved Prakash (supra), the Hon'ble High Court has held that "The State and its functionaries are under constitutional obligation to follow the rule of law which includes implementation of the orders passed by the judicial forum including the Tribunal and not to flout those orders either by inaction or deliberate violation."

15. Considering the facts and circumstances of the case, we found no error in the order passed on 27.4.2023. Accordingly, Modification Application No. 1573/2023 is rejected.