
(1997) 04 SC CK 0141

In the Supreme Court Of India

Case No : Contempt Petition (C) No. 589 of 1996 in SLP (C) No. 17014 of 1996

Anju Maheshwari

APPELLANT

Vs

Ramesh Yadav and Another

RESPONDENT

Date of Decision : 28-04-1997

Acts Referred:

Citation : AIR 1997 SC 2555 : (1997) AIRSCW 2502 : (1997) CriLJ 3122 : (1997) 5 JT 69 : (1997) 3 SCALE 711 : (1997) 5 SCC 453 : (1997) 4 Supreme 317 : (1997) 1 UJ 719 : (1997) 2 UPLBEC 1169

Hon'ble Judges : S. P. Bharucha, J;M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The following orders adequately explain the circumstances in which a suo moto contempt notice was issued to Mrs. Sumita Kandpal, Principal Secretary of the Medical Health, Family Welfare and Medical Education Department, Government of Uttar Pradesh.

Order dated 27th January, 1997:

Adjourned for 2 weeks. The State of Uttar Pradesh shall file an appropriate affidavit explaining how the impugned order came to be passed and why the counsel was not appropriately instructed at that stage. The Principal Secretary of the Medical Health and Medical Education Ministry shall remain present in Court on the next date of hearing. (Emphasis supplied.)

Order dated 10th February, 1997:

On 27th January, 1997, this Court directed the Principal Secretary of the Medical Health and Medical Education Ministry to remain present in Court on the next date of hearing, the Contempt Petition having been adjourned for two weeks.

Mr. Dhingra, learned Counsel for the State, on being asked, tells us that the said Principal Secretary is not present in court. He states that she is in the U.S.A. He

states that her programme to go to the USA had been fixed as far back as July, 1996, that the order dated 27th January, 1997 was received in the office of the said officer on 7th February, 1997 when she was in Delhi and that she flew out of Delhi on 8th February, 1997. Learned Counsel states that the said officer could not be contacted before she flew out of Delhi.

An affidavit shall be filed by the concerned officers who is supposed to have attempted to contact the said officer (Mrs. Sumita Kandpal) at Delhi, stating the day and time at which intimation of the fact of said order was first received in the office of Mrs. Sumita Kandpal, the day and times at which he attempted to contact her and where. We shall decide whether or not to issue suo moto notice of contempt for breach of the order dated 27th January 1997, to Mrs. Sumita Kandpal after we have perused the affidavits.

The matter shall be listed on 3rd March, 1997, by which time Mrs. Sumita Kandpal, it is stated, will be back in India. She shall be present in Court on that day. Mr. Dhingra states that it shall be ensured that a copy of this order is served on Mrs. Sumita Kandpal when she arrives in Delhi.

Order dated 3rd March, 1997:

On 27th January, 1997, the Principal Secretary of the Medical Health and Medical Education Ministry of the State of U.P. was ordered to remain present on the next date of hearing. On 10th February, 1997 which was the next date of hearing, we were told that she had gone abroad, flying out of Delhi on 8th February, 1997. We thereupon directed the matter to be listed today ordering that she (Mrs. Sumita Kandpal) should be present in Court.

The said officer is present. It is stated on her behalf by Mr. Sorabjee that she had, before leaving Delhi on 8th February, 1997, filed an application for exempting her from personal appearance and for fixing another date for her appearance. That application was, apparently, never filed.

Counsel, on being asked, stated that the said officer had left the country without finding out whether the Court had passed an order exempting her from appearance as required by the order dated 27th January, 1997 and fixing another date for her appearance.

There can be no doubt, in the circumstances, that the said officer, knowing that there was an order of this Court that required her presence, flew out of the country before the date thereof and was, therefore, not present as directed. We, therefore, do not, at this stage at least, accept the apology tendered on behalf of the said officer. We issue notice to her to show cause why suo moto proceedings for contempt should not be taken against her.

2. Mrs. Sumita Kandpal has now filed an affidavit dated 4th April, 1997. She reiterates therein the unqualified apology tendered in her earlier affidavit dated 27th February, 1997. She states that on receiving the order of this Court dated 27th January, 1997, she ensured full and complete compliance thereof on the

next day. In view of her official programme to attend a conference in the United States of America, which had already been finalised, she consulted the then Additional Advocate General, U.P., Shri G.K. Mehrotra. She was advised by him that she could go to the United States "as the order of this Honourable Court has been complied with and in view of the affidavit for exemption sworn on 6.2.97, as per legal advice given. The deponent admits that there has been an error on her part in not ascertaining from her counsel as to whether the affidavit of exemption had been filed and presented before this Hon'ble Court with a prayer for exemption and whether this Hon'ble Court has been pleased to pass an order exempting the deponent from appearance on 10.2.1997. The deponent expresses her deep regret and apology for this error.... The mistake on her part was on account of legal advice she received and which she bona fide believed to be correct." Her affidavit states that Mrs. Kandpal is a senior IAS officer with an excellent and clean service record.

3. Learned Counsel appearing for Mrs. Kandpal reiterated the unqualified apology contained in her affidavit. He drew attention to the circumstances in which Mrs. Kandpal was not present in Court on 10th February, 1997. He submitted that the lapse was unintentional and due to erroneous legal advice. He asked this Court magnanimously to accept the unqualified apology Mrs. Kandpal had tendered.

4. We shall assume that Mrs. Kandpal was advised that she could go to the United States and not attend this Court on 10th February, 1997, in view of the fact that the order in connection With which her attendance was required had been complied with and in view of the affidavit for exemption that she had made, but Mrs. Kandpal, as she herself states, is a senior IAS officer. A senior IAS officer should know better than to presume that she need not obey the order of the Court because the purpose for which her presence was required no longer survived or that the exemption that she had sought would be given. It seems to us that Mrs. Kandpal put the order requiring her presence in Court on 10th February, 1997, out of her mind in her keenness to go abroad. It is only this which can explain the admitted fact that she did not even bother to find out whether this Court had in fact exempted her from appearance.

5. As against the patent disobedience of the order of this Court there are three factors which we must take into account. First, had Mrs. Kandpal's exemption application been filed and moved, there is little doubt that it would have been granted. Secondly, to find Mrs. Kandpal guilty of contempt and punish her would blight her future career. Thirdly, Mrs. Kandpal has tendered an unqualified apology at the earliest.

6. Taking these factors into account, we accept the unqualified apology tendered by Mrs. Kandpal. At the same time, we sternly caution her to be more heedful of judicial orders in future.

7. The contempt notice issued to Mrs. Kandpal is discharged.