
(2003) 09 CAL CK 0028
In the Calcutta High Court

Case No : C.P.A.N. No. 19 of 2003 in Writ Petition No. 12990 (W) of 2002

Atanu Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Constitution of India, 1950 — Article 215, 226
Evidence Act, 1872 — Section 114

Citation : (2004) 1 CHN 256 : 108 CWN 261 : (2003) 2 ILR (Cal) 535

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Tapan Coomaar Dey, for the Appellant; Rabilal Maitra and Sajal Kanti Bhattacharya, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an application for Contempt of Court on the allegation of violation of the order dated September 11, 2002.

2. The writ petitioner moved an application under Article 226 of the Constitution of India ("the writ petition" in short), inter alia, complaining inaction on the part of the respondents in not considering the candidature of the writ petitioner for his admission in first year class either in B.Sc. (Agriculture) or B.Sc. (Horticulture) honours course for the session 2002-03 in the Bidhan Chandra Krishi Viswavidyalaya.

3. The said writ petition has been disposed of on September 11, 2003, in presence of the learned advocates for the said University, inter alia, "by granting liberty to the writ petitioner to make a detailed representation for ventilating his grievances addressed to the respondent No. 2 by ten days from date. In the event such representation is made, the respondent No. 2 will consider such representation sympathetically, but in accordance with law after giving an opportunity of hearing to the writ petitioner and/or his representative and will pass a reasoned and speaking order within two weeks from the date of submission of the representation to him. The respondent No. 2 will communicate

his decision to the petitioner immediately after taking the decision."

4. It is contended in the present application that pursuant to such liberty granted by this Court on September 11, 2002, the writ petitioner, through his learned advocate, submitted a representation dated September 11, 2002 addressed to the Registrar of the said University, who was the respondent No. 2 in the said writ petition. The office of the Registrar of the said University received the said representation dated September 11, 2002 on September 13, 2002. Since the contemnors did not comply with the order dated September 11, 2002, the learned advocate for the petitioner issued a notice dated September 30, 2002 requesting the Registrar of the said University to comply with the said order immediately. It was indicated in the said notice that in the event of failure to comply with the said order, the said learned advocate had instructions to take steps for violation of the order of this Court. The said notice dated September 30, 2002 has been served in the office of the Registrar of the said University on October 1, 2002 and a copy of the said notice has, also, been served in the office of the learned Government Pleader, High Court, Calcutta on October 1, 2002.

5. The learned Government Pleader represented the university authorities before this Court on September 11, 2002.

6. As the order dated September 11, 2002 has not yet been complied with, the petitioner filed the present application for Contempt of Court on January 3, 2003. In the said contempt application Shri Surajit Maflick has been, impleaded as contemnor No. 1 while Shri Asok Banerjee has been impleaded as contemnor, No. 2.

7. The said Surajit Mallick was the Registrar of the said University up to October 31, 2002 and Shri Asok Banerjee took over the charge of the office of the Registrar of the said University on November 1, 2002.

8. In reply to the said application for contempt two affidavits-in-opposition have been filed. Shri Surajit Mallick in his affidavit, inter alia, contended that he had handed over the charges to the newly appointed Registrar of the University on November 2, 2002. He, however, stated in the paragraph 12 of the said affidavit as under:

"I submit that I have great regard and faith to the solemn order of the Hon'ble Court and I have deliberately and willfully, I state that it is the petitioner who did not comply with the order of the Hon'ble Court by not submitting any representation in detail to the Registrar of the said Viswavidyalaya for ventilating his grievances, I further submit that the petitioner himself by not complying with the order of the Hon'ble Court, willfully and intentionally filed the instant contempt application to harass the Registrar of the said Viswavidyalaya, keeping aside his own lapses to comply with the order dated 11.9.2002 of the Hon'ble Court."

9. Shri Asok Banerjee, the present Registrar of the said University, in his affidavit

stated that he had taken over the charge of the Registrar of the said University on November 1, 2002. However, in paragraph 1.1 of the said affidavit he, inter alia, stated as under:

"I state that in the order dated 11.9.2002 passed by the Hon''ble Court there was a clear direction upon the petitioner that the writ petitioner shall make a detailed representation for ventilating his grievances addressed to the respondent No. 2 by ten days from date. But the writ petitioner did not made(sic) any representation to the University authority personally as per order passed by the Hon''ble Court. It is pertinent to mention here that the petitioner did not submit any representation to the Registrar, Bidhan Chandra Krishi Viswavidyalaya in detail for ventilating his grievances."

10. An affidavit-in-reply has been filed by the petitioner and in the said affidavit the petitioner, inter alia, stated that he duly authorised and empowered his learned advocate to act on his behalf and, accordingly, in compliance with the order of this Court dated September 11, 2002 the said learned advocate submitted the said representation dated September 11, 2002 on his behalf.

11. Mr. Rabilal Maitra, learned Government Pleader, appearing on behalf of the contemnors, submitted that the petitioner did not make the representation to the Registrar of the University personally; the petitioner himself did not comply with the order and as such this application for contempt should be dismissed. He, further, submitted that the letter dated September 11, 2002 by the learned advocate for the petitioner is not the representation of the petitioner. As the petitioner did not make any representation, the contemnors had no occasion to consider such representation.

12. Mr. Tapan Coomaar Dey learned advocate, appearing for the petitioner, submitted that he filed the representation dated September 11, 2002 for and on behalf of the petitioner in compliance of the order dated September 11, 2002. He, further, submitted that in spite of the receipt of the said notice dated September 30, 2002 by the office of the Registrar of the said University, the Registrar did not give any reply indicating that the representation submitted by the petitioner through his learned advocate was not a proper compliance of the direction, inter alia, granting liberty to the petitioner to make representation to the Registrar of the University.

13. When a member of the Bar writes a letter purporting to be instructed by a client, there is a presumption, until contrary is proved, that the letter has been issued under the instruction and on behalf of the client. This is my reading of Section 114 of the Evidence Act, 1872.

14. It is seen from the order dated September 11, 2002 that specific and unequivocal directions have been given as to how and by whom the representation is to be considered. It is not open to the contemnors to give a wrong interpretation to the order and then justify their conducts on the basis of such wrong interpretation. In the ultimate analysis the view so taken by the

contemnors are not found to be legally sustainable and I think that the interpretation was not bona fide. It is not a case of non-implementation of an order based on a bona fide interpretation of my order and this case, in my view, does not involve any question of interpretation. I granted leave to the writ petitioner to make a representation to the Registrar of the said University. Whether the representation was made personally or through his learned advocate was immaterial. It was for the contemnors to comply with the order. The actions of the contemnors are not bona fide, which clearly appear from the fact that they have not stated, till the filing of the affidavits in the contempt proceedings, that they were unable to comply with the order dated September 11, 2002 as the representation was not made personally by the petitioner. This case involves a career of a young student and the contemnors being teachers, it was expected from them that they should have taken more reasonable stand in the matter.

15. I am, therefore, of the opinion that this is a fit case for taking action in contempt. I hold both the contemnors guilty of contempt. However, as I have already indicated hereinabove that it involves a career of a young student and the contemnors are the teachers, in order to give the contemnors an opportunity to purge the contempt before I pass the sentence, I adjourn the matter for three weeks to enable the contemnor No. 2, the present Registrar of the University, to report compliance before September 23, 2003, failing which this Court will proceed to pass appropriate orders in respect of the contempt. The contemnor No. 2, Shri Asok Banerjee, will remain present at the next hearing on September 23, 2003 to inform this Court whether or not the order dated September 11, 2002 has been complied with. If not, the contemnors will run the risk of being sentenced.

16. Office is directed to put up this matter on September 23, 2003 under the heading "for orders" at the top.

17. Xerox plain copies of this order duly countersigned by the Assistant Registrar (Court) of this Court are to be supplied to the learned advocates for the parties on usual undertakings.