

(2003) 11 CAL CK 0040
In the Calcutta High Court
Case No : WPCRC 2132 and 2133 (W) of 2002

Bangshibadan Nandi and Others

APPELLANT

Vs

Jnan Sankar Mitra and Another
 Others Vs Jnan Sankar Mitra

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 3

Citation : (2004) 1 CALLT 352

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Amal Baran Chatterjee, Subhendu Kumar Mukherjee and Anadi Banerjee, for the Appellant; Subir Sanyal, Arabinda Bhattacharjee and Sutirha Das, for the Respondent

Final Decision : Dismissed

Judgement

A. Lala, J.—This contempt application has been made by the petitioners for alleged wilful disobedience of the order dated 6th January, 2000 passed by the Court. The alleged contemnors are the named Chairman of the concerned District Primary School Council and the named District Inspector of Schools (Primary Education) of the concerned District of West Bengal.

2. The original order dated 6th January, 2000 has two parts. The first part is for making a separate panel of the ex-census employees by the Employment Exchange and forwarding the names accordingly for the purpose of interview and appointment. The second part is that in view of a Division Bench judgment being 1997(1) CLJ 501 (Ratan Kumar Saha and Ors. v. State and Ors.) the Chairman of the concerned Council will consider the respective cases of the candidates sympathetically about age bar as there was no fault of the petitioners in this respect. It was also held that such order of the Division Bench has a binding effect upon this Court.

3. According to me, there is no dispute with regard to formation of separate panel by the Employment Exchange and forwarding the same. The whole contention of the alleged contemnors is that there is no wilful disobedience and/or violation of the order of the Court since the Division bench judgment being 1997(1) CLJ 501 (supra) became per incuriam in view of the subsequent Division Bench judgment and order of this Court.

4. Learned counsel appearing for the Contemnors cited a judgment reported in 1999(2) CHN 289 (Biman Chandra Karmakar v. State of West Bengal and Sukanta Mondal and Anr. v. State of West Bengal) whereunder a Division Bench of this Court followed the judgment of 1998(1) CLJ 374 (Biman Chandra Karmakar and Ors. v. State of West Bengal and Ors.) and held that the aforesaid Division Bench judgment being 1997(1) CLJ 501 (supra) must be held to be sub silentio and not binding upon the subsequent Bench because the judgment is rendered without taking into consideration the statutory Rules. It was held in 1998(1) CLJ 374 (supra) that the judgment under appeal could not have been passed only on the basis of the decision in the Ratan Kumar Saha's case.

5. In 2001(2) CLJ 161 (Chairman, Ad-hoc Committee, District Primary School Council, Burdwan v. Rabindra Nath Ghosh and Ors.) other Division Bench principally accepted the view point of 1999(2) CHN 289 (supra). The aforesaid judgment is very much categorical towards the issue that Court should not issue the direction to the authorities to forward the names of the respective candidates as ex-census employees and to consider sympathetically for grant of relaxation of age. Therefore, by now it is well-settled.

6. In merit whether the ex-census employees will be given services or not the judgment reported in Government of Tamil Nadu and Another Vs. G. Mohammed Ammenudeen and Others, has been cited before this Court from which it appears that Supreme Court wanted to condone the age bar for giving accommodation to the employees attached to the census operation. The petitioners contended that the aforesaid Supreme Court judgment has a binding effect upon the Court.

7. The latest Division Bench Judgment of this Court in 2001(2) CLJ 161 (supra) did not consider the ratio of the judgment reported in Government of Tamil Nadu and Another Vs. G. Mohammed Ammenudeen and Others, . Hence, such judgment is non-est in the eye of law. In view of Article 141 of the Constitution of India the names were forwarded by the Employment Exchange to the Chairman of the concerned District Primary School Council admittedly. It is incorrect to say that the Employment Exchange did not forward the names. Therefore, when the names were forwarded by the Employment Exchange the contemnor wilfully and deliberately held the same as ineligible for consideration in violation of the order of the Court. The appeal preferred from the order in this Court was dismissed, and therefore, the order has a binding effect upon the respondents.

8. They relied upon a judgment reported in State of Tripura Vs. Tripura Bar

Association and Others, to establish that the latter Division Bench cannot take a different view from that taken by the earlier Division Bench.

9. They have relied upon a full Bench judgment of the Amali English Medium High School and another, ect. Vs. The Government of Andhra Pradesh and others, that the Court exercising the contempt jurisdiction should not correct or make observations touching the merits of the judgment giving rise to contempt case.

10. However, I am on a different point altogether in view of the present scenario before this Court. I am of the view that it is crystal clear from the order that the judgment of 1997(1) CLJ 501 (supra) was followed by this Court. Whether the subsequent Division Bench judgment is per incuriam or said to be sub silentio in respect of the earlier Division Bench that is to be taken into account by an appropriate Bench in the appropriate proceedings. The Court of Contempt is not made for the same. Similarly, whether the latest Division Bench judgment reported in 2001(2) CLJ 161 (supra) is non-est in the eye of law in view of Government of Tamil Nadu and Another Vs. G. Mohammed Ammenudeen and Others, that cannot also be considered by the contempt jurisdiction of this Court. Contempt jurisdiction is very much restricted in respect of the wilful disobedience or not. If it sees that there is a prohibition of law or it is impossible to act in view of the circumstances, it cannot be construed that there is a wilful disobedience on the part of the contemnors. The petitioners might have a very good case in merit but such merit cannot be considered in the contempt jurisdiction. It is to be remembered that contempt is a quasi criminal proceeding. Therefore, unless and until and the Court is convinced that there is a wilful disobedience no consequential relief can be granted. This is such a case. The pure and simple question is whether condonation of age bar is justifiable or not in view of several Division Bench judgments of this Court as well as Supreme Court. The appeal which has been preferred from the original order of this Court was dismissed not on merit but on the technical point being time barred. Therefore, it cannot be construed that inspite of the several judgments of the Division Bench this was dismissed in merit. Therefore, it is to be understood that there is a defence lies in the mouth of the alleged contemnors in merit. If it is so, then the same cannot be construed as wilful disobedience on the part of the alleged contemnors. Contemnors have contended that they tendered unqualified apology in the event of finding of violation and deliberate disobedience on the solemn judgment and order of the Court on 6th January, 2000 passed by this Court. But at the same time they have given a clear picture about their cause of non-compliance. Moreover, the order of the Court is restricted in respect of consideration by the Chairman of the Council, alleged contemnors No. 1 in view of the binding effect of the Division Bench judgment reported in 1997(1) CLJ 501 (supra). The ratio of such judgment is no more existable in view of the following legal analysis, Court cannot say that inspite of the same one has to follow the order. If the subsequent Division Bench judgment says that the earlier Division Bench judgment is inapplicable for certain circumstances unless it is rectified by a larger Bench the principle of the latter judgment has to be accepted. Since the very existability of

the earlier Division Bench judgment is under question I do not think it would be appropriate to pass any order of contempt as against the alleged contemnors. However, if it is ultimately decided by a subsequent Bench or larger Bench that the ratio of 1997(1) CLJ 501 is applicable then obviously the petitioners will be entitled to raise the issue once again for non compliance, if any. But till such time no order can be passed in this contempt application.

11. So far as the technicality of the contempt application is concerned it has not been discussed hereunder in view of the satisfaction of the Court in respect of the defence of the contemnors.

12. Thus, the contempt application stands dismissed. The contempt Rule stands discharged. Personal presence of the contemnors is permanently dispensed with. No order is passed as to costs. However, this order will not prevent the petitioners to raise the issue before an appropriate forum.

Let an urgent Xeroxed certified copy of this judgment, if applied for, be given to the learned advocates for the parties within two weeks from the date of putting the requisites.