
(1991) 07 OHC CK 0035

In the Orissa High Court

Case No : Original Criminal Miscellaneous Case No. 53 of 1991

Beleswar Debata and Another

APPELLANT

Vs

Priyanath Mohanty and Another

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Citation : (1992) CriLJ 495 : (1991) 2 OLR 200

Hon'ble Judges : B.L. Hansaria, C.J.;A.K. Padhi, J

Bench : Division Bench

Advocate : Milan Kanungo, L. Kanungo and S. Satpathy, for the Appellant; R.K. Patra, Government Advocate, I. Mohanty and B.K. Bal, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The two petitioners challenged an order dated 16-2-1991 passed by opp. party No. 1 which stated that their services shall not be required with effect from 20-3-1991. They approached this Court in O J. C. No. 1305 of 1991 and on 18-3-1991 an order of status quo regarding cessation of the services of the petitioners was passed by a Bench of this Court consisting of Hon'ble Justice Rath and Hon'ble Justice Jaqadeb Roy. The case of the petitioners is that a xerox copy of the order along with a Setter of the advocate of the petitioners Shri Milan Kanungo was served on opp. party No. 1 on 19-3-1991. On 20-3-1991 petitioner No. 1 went to work in the morning and signed the Attendance Register. Petitioner No. 2 also similarly went to office at about 10 A. M. and signed the Attendance Register, At about 10-30 A. M. or 11 A. M., opp. party No. 2 questioned the petitioner as to why they had put their signatures in the Attendance Register in spite of their retrenchment. They replied that the order of retrenchment had been stayed by this Court and so they were entitled to work. This opposite party stated that he had no knowledge about the order of the Court and directed the petitioners to meet opp. party No. 1. The petitioners thereupon met opp. party No. 1 and stated that they had obtained the order of stay from this Court and so there was no reason to prevent them to

work. At this, opp. party No. 1 stated (as mentioned in the contempt petition) that :

"TUMA CHAKIRI LINCARAJ RATH KI K. C. JAGADEV RAY RAKHIBE NAHELE MILAN KANUNGO RAKHIBE, CHAKIRI JAIN COURTRE, ETHI TA KAKU CHAKIRI MILIBA NAHIN."

Translated into English, it reads thus:

"Lingaraj Rath or K. C. Jagadeb Ray will keep you in service, or else Milan Kanungo will keep. Your service is in Court. You will not get your service here."

The further averment of the petitioners is that opp. party No. 1 thereafter personally came and scratched out the petitioners' signatures in the Attendance Register and asked opp. party No. 2 to mark the petitioners as absent.

2. The allegations of the petitioners have been, denied by the opposite parties. Opp. party No. 1, Deputy Director, Survey and Map Publication, in his show cause denied any knowledge about the petitioners having signed in any Attendance Register. Indeed, according to him, the maintenance of the Attendance Register was unauthentic about which he knew for the first time from the contempt petition. He denied having made any remarks as alleged by the petitioners. According to him, no one came and ventilated his grievance to him on 20-3-1991. He further averred that it was apprehended by him that opp. party No. 1 who is a Foreman was hands in glove with the petitioners and was trying to create an impression as if the order of status quo passed by this Court was not acceptable to him. In the evidence which was led by this opposite party in the case pursuant to the order passed on 24-6-1991, he took a stand that he was not present in his office on 20-3-1991 from 10 a. m. till about 3 p. m., and as such the question of the petitioners meeting him in the office around 11 O' clock did not arise. The further averment of this opposite party in his show cause is that the attendance of the two petitioners was approved by him on 11-4-1-1991 and the dues of the petitioners had been drawn from 1-3-1991 to 31-3-1991.

3. Opp. party No. 2, Foreman, Survey and Map Publication Office, in his show cause filed on 16-5-1991 stated that he was not aware on 20-3-1991 about any order of status quo passed by this Court and so, after finding that the petitioners had signed the Attendance Register on that day he wrote against their signatures "Not allowed from today as per the office Order No. 388(4) dt. 16-2-1991". He further stated that he was not aware as to who had scratched or cancelled the signatures of the petitioners in the Attendance Register. In the additional show cause filed by this opp. party on 24-6-1991, he took the stand that on 20th he was called by opp. party No. 1 who asked him under what circumstances the petitioners had been allowed to sign the Register. To this, the reply given was that they had signed the same before this deponent had commenced his duty for the day. Thereupon opp. party No. 1 asked him not to allow these employees to function, in obedience to which this deponent marked "Not allowed" in the Register. The further stand of this opp party is that he knew about the order of

status quo on 9-4-1991 when opp. party No. 1 instructed him to mark the petitioners "present from 20-3-1991 to 31-3-1991.

4. The above is the case of the parties in short. The question for examination is whether on the basis of the materials on record which include the affidavits of the parties and evidence of the two petitioners as well as of opp party No. 1, a case for contempt has been made out or not.

After discussing the evidence His Lordship held that both the opp parties 1 and 2 are guilty of contempt and then held as follows ;

13. In view of all that is stated above, we find opp. party No. 1 guilty of contempt. This takes us to the case of opp. party No. 2. Though he has taken a stand that he knew about the order of status quo passed by this Court only on 9-4-1991, we are not at all inclined to accept this statement. According to us, this opp. party knew on 20-3-1991 itself about the order of status quo as it was on that day that the petitioners had admittedly put their signatures in the Attendance Register maintained by him to which objection was taken by this opp party which must have brought the answer from the petitioners that they were doing so pursuant to the order passed by this Court. It is the admission of this opp. party in para 4 of his first show cause that he met the Deputy Director on 20-3-1991 in the first hour and the further statement in para 3 of the additional show cause that on being asked by the Deputy Director not to allow the petitioners to function, he had marked against the name of petitioner No. 1 "not allowed" does not leave room to doubt that he had come to know about this Court's order on 20-3-1991 itself ; otherwise there would have been no occasion for him to meet the Deputy Director and for the Deputy Director to call for this opp. party to meet him. As already held, the Deputy Director must have set it for the Foreman after the petitioners had met the Foreman on the latter not allowing them to work. Shri Mohanty appearing for this opp. party, however, submits that he not being a party in the O. J. C, a copy of this Court's status quo order was not made available to him because of which he remained ignorant, about the same. We would accept the contention of Shri Mohanty that the order of status quo as passed by this Court was not made available to this opp. party, but then the facts and the events as they had happened on the morning of 20-3-1991 do not leave any doubt in our mind that he had come to be apprised of the order of status quo passed by this Court. Of course, this opp. party was in a way horn of dilemma inasmuch as on one side there was an order of this Court by force of which the petitioners could have worked on 20-3-1991 and, on the other hand, there was the order of his immediate superior not to allow the petitioners to work on that day. But then, in the mind of a law abiding citizen, there could not have been any conflict as to which order between the two required compliance. Opp. party No. 2, therefore, had also violated (his Court's order by his action of not allowing the petitioners to work on 20-3-1/91 after his having come to know about the order of status quo passed by this Court. We would, therefore, find him as well guilty of contempt.

14. This takes us to the question regarding the sentence to be awarded to the two contemnors. Before we express our view on this aspect of the matter we would like to state that this Court has noted with regret the growing tendency of wilful violation of this Court's orders. As early as March, 1990, this Court had described this tendency in Original Criminal Misc. Case No. 16/90 as a cancerous growth in the system of administration of justice prevalent in the country and had desired to put an immediate stop to the tendency. This is what was observed in this connection in that case :

It has been a sad experience of this Court that orders passed by it are not strictly obeyed and not complied with at all at times. A spate of contempt petitions would bear this statement. If an order obtained even from this Court is not complied with, there is no doubt that people at large would lose faith in the entire system of administration of justice and the same would cause a great dent to the rule of law which this Court has to uphold at any cost. People approach the Courts when they are in distress, and, if after spending time, money and energy, the orders obtained are flouted or not complied with, a serious view of the same has to be taken. According to us, it is high time that the tendency, be of officials or non-officials, in not carrying out orders of the Courts is put to a stop before it is too late to be cured. The tendency to violate Court's orders is almost like a cancer in the system of administration of justice and this has to be stopped before it spreads and eats away the whole system."

A lenient view about sentence was, however, then taken and the contemner was let off with imposition of fine only. Subsequently finding that imposition of fine was not having the desired result, in some other cases taken punishment of imprisonment of one day was awarded. This too has made no difference. It is, therefore, felt that time has come to award really deterrent and exemplary sentence to keep in tact the majesty of law and the fabric of administration of justice,

15. in so far as opp. party No. 1 is concerned, his guilt-is unpardonable. He had not only openly and valiantly wilfully disobeyed the order of this Court but had thought it fit to belittle the Hon'ble Judges who had passed the order of status quo. In his effort to protect him, he even went to the length of creating evidence by causing interpolation in official document. The position this opposite party holds being very responsible, as would have expected him to show full regard to the order of the Court established by law. Maintenance of rule of law should have been very dear to his heart. But all our expectations from him are belied as he took the order of status quo passed by this Court as a challenge to his authority, Such a person has to be adequately punished. Keeping in view the background of this case and the ever increasing tendency of showing scant regard to the orders even of this Court and the . need to pass in the larger public interest a deterrent sentence, as sentence this opp. party to civil imprisonment for one month.

16. In so far as opp. party No 2 is concerned, the magnitude of his guilt is far less. His fault, is that he allowed himself to disobey this Court's order because of

the order of his superior. We cannot, however, tolerate a situation where a person would wilfully disobey the order of this Court because of the order of his superior though the superior's order, to that person's knowledge, is not lawful. The uprightness in opp. party No. 2 would have required him to state clearly to opp. party No. 1 that he would not obey the illegal order of the latter. Opp. party No. 2, however, faltered. But then, how many upright officers we would get these days ? Realising the position and status of opp. party No 2 and the circumstances under which he disobeyed the order of, this Court, we would take a lenient view in so far as awarding of sentence on him is concerned, We think ends of justice would be met if this contemner is sentenced to civil imprisonment for one week, May we say that we are imposing this sentence on this opp. party whereas we have sentenced opp. party 1 to imprisonment for one month, because (i) he is not the prime offender; (ii) had not belittled the judges of this Court and (iii) has not taken recourse to manipulation of official record to save his skin. These are some factors which mitigate the guilt of this opposite party. There is, however, an aggravating factor. The same is that it was he who raised objection in the first instance to the two petitioners-joining work on 20-3-1991. If he would have shown respect to the Court's order, the situation might not have taken the turn it took. Even so, we would be candid in stating that we would have awarded a lesser sentence than just mentioned on this opp. party if he would have made a clean breast of everything by saying that though he knew about this Court's order on 20-3-1991, but as he was ultimately ordered by the Deputy Director not to allow the petitioners to work, he obeyed his order to avoid any harm to him in his service career. If after saying so, he would have tendered unqualified apology, we would not have sent him to jail for . one week. But he too took recourse to falsehood by denying any knowledge of this Court's order on 20-3-1991.

17. In the result, the petition is allowed by finding the opposite- parties guilty of contempt and by awarding on them sentences as aforesaid. We also order the opposite parties to pay all the dues of the petitioners and allow them to work till the order of status quo lasts

A.K. Padhi, J.

18. I agree.