

(2000) 07 GAU CK 0008

In the Gauhati High Court

Case No : Civil Original (Contempt) Petition No. 23 of 1997

Bimal Krishna Paul and Others

APPELLANT

Vs

Kharak Singh and Others

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 2, 20

Citation : (2000) 2 GLT 584

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : B. Das, D.K. Biswas, S. Lodh, S. Chakraborty and A. Bhattacharjee, for the Appellant; S. Deb and R. Dasgupta, for the Respondent

Judgement

D. Biswas, J.—This petition has been filed u/s 12 of the Contempt of Courts" Act, 1971 alleging deliberate violation of the order passed by this Court on 1.7.1996 in COP (C) No. 6 of 1996 arising out of Civil Rule No. 309/1988.

2. I have heard Mr. S. Lodh, learned Counsel for the Petitioners and Shri S. Deb, learned senior advocate assisted by Mr. R. Dasgupta for the Respondents.

3. The Petitioners along with Ors. filed Civil Rule No. 309 of 1988 for regularisation of their services under the Respondents. This Court by an order dated 17.11.1992 disposed of the Civil Rule with the direction for absorption of the writ Petitioners in order of their seniority. The observation and direction relevant for adjudication of the issue at hand are quoted below:

In reply, Mr. A.M. Lodh, learned Counsel for the O.N.G.C. on consideration has submitted that out of 10 Petitioners 6 persons have already been given regular appointment and regarding 4 other Petitioners they will also be regularised as and when vacancy occurs. Mr. Lodh, has drawn the attention of this Court to a decision of the Apex Court in Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others,

In view of the above position, the Respondents are directed to treat the 4

Petitioners, namely, Shri Biraal Krishna Paul, (2) Shri Santosh Kr. Saha, (3) Shri Amal Kishore Das and (4) Shri Benu Ranjan Das as temporary employees of O.N.G.C. and they shall be absorbed as and when vacancy occur. While absorbing them length of their service shall be taken into consideration. In other words, they shall be absorbed according to their seniority as casual employee. They shall be treated as temporary from the date of this order.

4. It would appear that the order passed by this Court for regularisation of the services of the writ Petitioners who were at the relevant time working as casual employee was passed on consent. It is needless to say that the Respondents in the absence of exceptional circumstances have no option but to comply with the direction given by this Court in the judgment and order referred to above.

5. The Petitioners earlier filed a petition u/s 12 of the Contempt of Courts" Act, 1971 alleging non-compliance of the order passed by this Court. This petition was registered as CO (C) P. No.6 of 1996. In this petition Shri Kharak Singh, Deputy General Manager (E&T), ONGC was arrayed as Respondent/contemner. This contempt petition was disposed of by this Court on 1.7.1996. The order reads as follows:

1.7.96 Heard learned Counsel for the parties.

The Respondents are directed to carry out the order passed on 17.11.92 in Civil Rule No. 309/88. This aforesaid order has to be carried out within a period of three months from today peremptorily.

Besides this order, there will be no order on the contempt petition.

The Rule of Contempt is discharged. No costs.

6. It would appear that the period of three months allotted by this Court expired on 1.10.96. Since this order was also flouted by the Respondents, the petition at hand has been preferred against Shri Kharak Singh, Deputy General Manager (E&T) and two Ors. for initiation of a proceeding u/s 12 of the Act of 1971.

7. The Respondents submitted their reply to the show cause notice separately. The Respondent No. 1 in his reply on oath submitted that he is no longer in charge of the ONGC Limited, Tripura Project and he has no control or any authority over any of the matters related to the said Tripura Project.

8. Shri Pranab Kumar Aduk, Respondent No. 2, in his reply to the show cause submitted that the present petition is barred by limitation as it has been filed after one year from the date of order in CO (C) P. No. 6 of 1996. According to him, he had joined the Tripura Project on 4.1.1997 and from his knowledge borne on record he submitted that the Petitioners have been accepted as temporary workmen as per order passed in the Civil Rule, it is submitted that the direction of this Court for absorption of the Petitioners as and when vacancy occurs could not be complied with "in the absence of any vacancy". Referring to the circulars dated 4.10.1995 and 8.8.1995 it has been pleaded that the said

circulars were related to special recruitment drive for SC/ST to liquidate the backlog. Although two posts were released by the Headquarter, the selection process could not be completed due to industrial unrest. The Petitioners No. 3 and 4 who belong to Scheduled Caste Community were also not eligible for consideration for the post of Helper Grade-III and Khalasi Grade-III as per circular dated 4.10.1995. It is further submitted that the eligible candidates from amongst the Petitioners were called for interview/selection at Calcutta, but the said selection process could not be completed due to refusal by the Petitioners. It is further pleaded that there was a bipartite conciliation with the Workers' Union and the Management and the condition of the services of the employees have been modified with the approval of the Board of Directors in February, 1997. The amendments made in the Recruitment and Promotion Regulation, 1980 came into force with effect from 1.1.1997 for promotion and from 14.3.1997 for recruitment. As per modified recruitment rules, minimum qualification has been prescribed as "Class-X" for appointment in Class-TV posts. As such, the Petitioners though belong to Scheduled Caste Community are not qualified for regular appointment in Class-FV posts. Thereafter, a circular was issued by the authority directing future recruitment strictly in accordance with the Recruitment and Promotion Regulation, 1980, as amended. In paragraph-14 of the reply, it is clearly stated that any action taken by the answering Respondent must be in consonance with the rules, and since the Petitioners belonging to reserved categories do not satisfy the eligibility criteria, the Respondents were unable to absorb any one of them.

9. Shri S. Lodh, learned Counsel for the Petitioners submitted that the two vacancies meant for Scheduled Caste candidates arose before issue of the said circular and the amendment. The Respondents have been deliberately avoiding to take prompt action to fill up the posts and, therefore, now they cannot take shelter behind the circulars issued subsequently with retrospective effect prescribing higher eligibility criteria.

10. Shri Deb, learned senior counsel controverting the above contention submitted that the Respondents took all steps to complete the process of selection and appointment in two vacant posts and the Petitioner No. 3 and 4 were infact asked to appear before the Interview/Selection Board at Calcutta. But the attempt was frustrated because of their non-cooperation. Thereafter, the interview was rescheduled and held at Belonia in the State of Tripura on 15.6.1997. The Petitioners No. 3 and 4 also appeared before the Selection Board. The Board recommended Petitioner No. 3 Shri Amal Kishore Das and Petitioner No. 4 Shri Benu Ranjan Das for appointment to the post of Junior Khalasi/Junior Helper vide the proceeding dated 15.5.1997. But the appointment could not be given as the authorities directed all concerned to go for appointment strictly in accordance with the Recruitment and Promotion Regulation, 1980, as amended. Shri Deb further argued that the petition is also hit by provisions of Section 20 of the Contempt of Courts' Act, 1971 as the proceedings were not initiated within a period of one year from the date of alleged violation.

11. Annexure-III is the copy of the "Working Sheet" of the Selection Board which met on 15.5.1997. It would appear from the proceedings that the Board sat for selection of Scheduled Caste category candidates for the post of Junior Khalasi/ Junior Helper as per court's order. The Working Sheet shows that the Board also ignored the minimum qualification prescribed and recommended Petitioners No. 3 and 4 for appointment. Even the Board on assessment of merit fixed the inter-se-seniority between the Petitioners No. 3 and 4.

12. Annexure-III, the Working Sheet shows that the process of appointment was completed but the appointment could not be made due to a circular issued on April 25, 1997 (Annexure-4). The circular reads as follows:

Consequent upon the circulation of Modifications of R&P Regulations, 1980, all recruitment/appointments will be made strictly as per the Modifications.

2. It is enjoined upon all concerned that all such cases processed following Regulations prior to the above Modifications where the appointment offers have not yet been issued, the exercise will be treated as null & void. Fresh action for recruitment, wherever necessary, may be taken following the Modifications to R&P Regulations, 1980 issued vide Office Order of even number dated 14.3.97.

This issues with the approval of competent authority.

13. The Respondents, obviously, could not have ignored the office order/circular dated April 25, 1997. Therefore, their failure to comply with the orders of this Court cannot be said to be deliberate and wilful. The Petitioners, admittedly, do not have the minimum required educational qualifications and, therefore, as per amended provisions of the regulation of 1980 they are not eligible for appointment in Grade-IV posts in the Oil and Natural Gas Corporation Ltd. Situated thus, it would be far-fetched to attribute the element of wilful and deliberate negligence on the part of the Respondents in complying with the orders of this Court. The fact remains that there has been delay in processing the matter and the delay has been occasioned by objection given by the other groups of workers. Under the circumstances, particularly considering the qualification aspect and the Circular dated April 25, 1997, the appointment of two other candidates made subsequently cannot be of any significance so far this petition for contempt is concerned.

14. It is pertinent to quote here the decision of the Supreme Court in Ashok Kumar Singh and others Vs. State of Bihar and others, wherein it has been held that in order to constitute the offence of contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971, there must be wilful or deliberate or contemptuous disobedience to the orders passed by the Court. Yet in Anr. decision in Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, the Supreme Court in the facts and circumstances of the case under adjudication held that there was no wilful disobedience on the part of the Respondents in complying with the direction given by the court in the aforesaid judgment. It was further held that the Court while giving the direction was not

conscious that the direction was likely to create a liability for payment of about Rs. 28 crores out of which Rs. 20 crores has already been disbursed. On that background, the Supreme Court opined that it was not possible to hold that the Respondents committed attempt of the Supreme Court.

15. Mr. Deb, learned senior counsel for the Respondents has placed before this Court a number of decisions in support of his contention that there has been no wilful disobedience of the orders passed by this Court. In *Jnanendra Kr. Paul Choudhury v. Geenral Insurance Corporation of India and Ors.* (1995) 1 GLR 66 and in *Pradip Kumar Dahotia v. Smti Chenu Prabha Choudhury (Barman)* 1995 (1) GLT 229, (1995) 1 GLR 243, this High Court reiterating the same view exonerated the Respondents. In the former case, it has been held that contempt of Court signifies wilful disregard or disobedience of Court's order which tantamount to bring the authority of the Court and the administration of law into disrrupte. It has been further held that inability to comply with a direction of the Court under reasonable circumstances cannot amount to contempt. In the latter case, a Division Bench of this Court held that mere unintentional disobedience to a judgment or order or process of Court may amount to contempt in theory only but it will not render the Respondent liable to punishment. A reference has also been made to the decision of the Supreme Court in *Indian Airport Employees Union Vs. Ranjan Chatterjee and another*, in order to show that to constitute an offence of civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, the disobedience of orders of the Court must be shown to be wilful and proof of mere disobedience is not sufficient. According to Supreme Court in the absence of proof of deliberate flouting of the orders of the Court, it would not be appropriate to hold it as a case of Civil contempt. In this judgment, the decision rendered in *Ashok Kumar Singh* (supra) has also been relied upon.

16. There cannot be any dispute with the law settled by the Supreme Court in various decisions referred to above. Whether the conduct of the Respondents in a particular case would amount to contempt or not is a matter of fact. In the instant case as well, the facts as indicated above clearly show that the Respondents were under constraint in giving effect to the direction of this Court in view of retrospective amendment of the Recruitment and Promotion Regulation of 1980 which prescribed higher educational qualification. The Respondents obviously had no option but to give effect to the provisions of the Regulation which was amended with retrospective effect. Even, they were also directed to follow the Regulation as amended by a circular issued on April 25, 1997. Situated thus, the element of wilful or deliberate disobedience cannot be attributed to the Respondents.

17. Yet, there remains the question as to whether the Respondents indicated for violation of Court's order can shield them from punishment taking the plea that they failed to comply with the orders of the Court in view of retrospective amendment of the law governing the field. This question was dealt with by a learned Single Judge of this Court in *Jeanny Plywood Industrial Ltd v. Lala*,

Collector Customs and Central Excise,. (1993) 2 GLR 292. The Respondents there were directed to make refund of the excise duty paid in excess of the law in force within a period of two months. The payment was refused by the Respondents in view of the amendment of the Central Excise Act, 1944. In the facts and circumstances of that case, the Court held that the legislature has changed the law regarding refund during pendency of the contempt petition and the conduct of the Respondents, therefore, in taking shelter under the amended provisions of the Act cannot be said to be mala fide. The amendment of the Central Excise Act, 1944 although brought into force with retrospective effect, yet, it came into force after about four months of the direction for refund of the amount. Even then the Court held that there being no mala fide, offence of contempt cannot be attributed. I do not find any reason to distinguish the case at hand with that of Jeanny Plywood Ltd. (supra). Although directions were given in the instant case in 1992, all efforts have been made by the Respondents to implement the same when vacancies were available. There has been no doubt delay in processing the matter in taking a decision. The Respondents alone cannot be faulted within view of resistance given by two of the Petitioners and other workers of the Project as indicated hereinbefore. The effort came to an end with the retrospective amendment of the Regulation of 1980 which has been ordered to be followed strictly by a circular issued subsequently.

18. Mr. Deb, learned senior counsel raised objection about the maintainability of the proceedings in view of the provisions of Section 20 of the Act of 1971. According to Mr. Deb, the order alleged to have been violated was passed by this Court on 17.11.1992 and this petition alleging contempt has been filed on 13.7.1997. In between, Civil Original Petition (Contempt) No. 6 of 1996 was also filed by the Petitioners. This was disposed of on 1.7.1996 with a direction to the Respondents to carry out the order dated 17.11.1992 passed by this Court in Civil Rule No. 309 of 1988 within a period of three months. This order extending time does not appear to have any significance since the order alleged to have been violated is conditional to the extent that the Petitioners shall be absorbed as and when vacancies occur. It is not clear from the copy of the order annexed as to whether vacancies were available when the said contempt petition was filed. Even in the instant contempt petition, there is no averment as to when vacancies occurred and the date of refusal of appointment. That apart, there is also no specific averment about the violation of the order passed in 1992. The contempt I petition appears to have been filed for alleged deliberate violation of the order passed by this Court on 1.7.1996 in C.O.P. (C) No. 6/96. A contempt proceeding is not an execution proceeding. Extension of time by the contempt Court for implementation of any order and violation thereof whether amounts to contempt has been questioned by Mr. Deb. However, the fact remains that the vacancies which arose in 1995 meant for the reserved category candidates were sought to be filled up by Petitioner Nos. 3 and 4. This could not be done because of indifferent attitude shown by them in appearing before the interview board. Thus, delay has been caused and by the time the matter was in an advanced

stage, the amendment came into force. The bar embodied in Section 20 of the Contempt of Courts Act, 1971 is applicable only when it is shown that there is wilful violation of the Court's order and proceedings have not been initiated within a year therefrom. Even if a petition is preferred within a period of one year, such petition will have no force if the proceedings is not initiated within a period of one year after application of mind. This is the law behind Section 20. The facts on record do not show any wilful or deliberate violation of the Court's order. Assuming that the vacancies occurred prior to 1995 and the Petitioners were refused appointment, this plea ought to have been pressed in the contempt proceeding of 1996. As on today, proceedings cannot be initiated because of the bar u/s 20. It is on this count the decisions in Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, , Gulab Singh and Another Vs. The Principal, Sri Ramji Das, and Dineshbhai A. Parikh Vs. Kripalu Co-operative Housing Society, Nagarvel, Ahmedabad and Others, may be referred to where law in this behalf has been crystallised.

19. The Respondents have given temporary status to the Petitioners as directed, but they could not absorb them against regular vacancies for the reasons detailed above. In my considered opinion, there is no contempt as alleged. This petition is accordingly dropped. No order as to costs.