
(2001) 01 CAL CK 0024

In the Calcutta High Court

Case No : C.R. No. 399-400 (W) of 1988, C.P.A.N. 1648 of 1988 and 1922 of 2000, C.A.N. No's. 810, 1311 of 2000

Bomkesh Chandra Jana and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-01-2001

Acts Referred:

Constitution of India, 1950 — Article 129, 215, 226(3)
Contempt of Courts Act, 1971 — Section 20, 23
Limitation Act, 1963 — Section 5

Citation : (2001) CriLJ 1336

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Dipak Banerjee and Apurba Kr. Chatterjee, for the Appellant; M.R. Mallah, for Contemner No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This is an application for contempt for alleged violation of the interim orders of injunction doited 29th January, 1988 as well as 18th Feb. 1988 passed by a Single Bench of this Court in writ petition being Civil Rule No. 399-400 (W) of 1988.

2. According to the petitioner an interim order was passed by this Court in the aforesaid writ petition in terms of prayer "e" of the main writ petition which is as follows :

An order of injunction do issue restraining the respondents and each one of them and their servants, agents from taking any steps and/or further steps for the purpose of filling up the vacancies of Forest Guard from outsiders whose names have been recommended by the Employment Exchange and/or from the Efficient National Volunteer Force personnel and/or taking any steps or pass any decision adverse to the interest of the petitioner.

3. Such order was extended by a subsequent order dated 18th Feb. 1988 till the disposal of the Rule which is also as follows:

In this Rule the petitioners have prayed for extension of the interim order which was granted on 29th January, 1988 for a period of 10 days.

The petitioners, have filed an affidavit showing service of copies of the writ petition along with notices and annexures upon the respondent Nos. 1 to 6 and receipts were granted by the respondents. In spite of such service no one on behalf of the respondents appeared to oppose the prayer for extension of the interim order. In that view of the matter I extend the interim order till, the disposal of the Rule.

4. According to the alleged contemnors the writ petitions were moved for the purpose of absorption of the writ petitioners in regular posts from the casual workers. All the candidates have already been observed in regular Group D post i.e. "Bono Sramik". NOW, in fact, the departmental orders which were passed on, 4th January 2000, and 19th January, 2000 are as good as promotion from Group D posts "Bono Sramaik" to the rank of Forest Guards. Therefore, there cannot be any violation of the original orders as passed by this Court on earlier occasion. That apart on the self same cause of action a contempt application was moved in the year, 1998 which is still pending. The instant contempt application is similar in place and hit by principles analogous to resjudicata.

5. It appears from the record that apart from such CAPN No. 1684 of 1998 two other applications were made by the parties here-under. One application being CAN No. 810 of 2000 was made for the purpose of incorporation of events subsequent to the writ petition and the other being CAN No. 1311 of 2000 was made by the respondents for vacating the interim order originally passed by the Court. Such application for vacating interim order was made before the second contempt application taking the scope and ambit of the Art. 226(3) of the Constitution of India due to obtaining ex parte interim order by the petitioners, however, it was opposed by the petitioners by saying that the notice was served for extension of interim order as will be evident from the order itself. According to this Court, neither the subsequent events are allowed to be incorporated in the writ petition for the purpose of developing the same nor by way of incorporation of such subsequent events one can succeed in earlier contempt application arose in view of the situation prior to such incorporation. None of the applications is tenable in the eye of law. The petitioners have accepted the position and made the subsequent contempt application before this Court being CAPN 1922 of 2000.

6. The learned counsel appearing for the petitioners contended before this Court that they have been compelled to proceed with the second contempt application in view of the latest judgment pronounced by the Supreme Court of India in Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], in interpreting the question of limitation u/s 20 of the Contempt of Courts Act for an action of

Contempt. Relevant part of such judgment is as follows (Paras 14 and 15) :

In order to appropriate the exact connotation of the expression "initiate any proceedings for contempt" it is necessary to notice several situations or stages which may arise before the Court dealing with contempt proceedings.

These are :

(1)(a) A private party may file or present an application or petition for initiating any proceedings for civil contempt;

(b) The Court may receive a motion or reference from the Advocate General or with his consent in writing from any other person or a specific Law Officer or a Court subordinate to High Court.

(ii) (a) The Court may in routine issue notice to the person sought to be proceeded against or;

(b) The Court may issue notice to the respondent calling upon him to show cause why the proceedings for contempt be not initiated;

(iii) The Court may issue the notice to the person sought to be proceeded against calling upon him to show cause why he be not punished for contempt.

In the cases contemplated by (i) or (ii) it cannot be said that any proceedings for contempt have been initiated. Filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the Court does not amount to initiation of the proceedings by the Court. On receiving any such document it is usual with the Courts to commence some proceedings by employing an expression such as "admit", "rule", "issue notice", or "issue notice to show cause" why proceedings for contempt be not initiated. In all such cases, the notice is issued either in routine or because the Court has not yet felt satisfied that a case for initiating any proceedings for contempt has been made out and therefore, the Court calls upon the opposite party to admit or deny the allegations made or to collect more facts so as to satisfy itself if a case for initiating the proceedings for contempt was made out, such a notice is certainly anterior to initiation. The tenor of the notice is itself suggestive of the fact that in spite of having applied its mind to the allegations and the material before it the Court was not satisfied of the need for initiating proceedings for contempt. It was desirous of ascertaining the facts or collecting further material whereon to form such opinion. It is only when the Court has found an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemnors should be called upon to show cause why they should not be punished then the Court can be said to have initiated proceedings for contempt. It is the result of conscious application of the mind of the Court to the facts and the material before it. Such initiation of proceedings for contempt based on application of mind by the Court to the facts of the case and the material before it must take place within a period of one year from the date on which the contempt is alleged to have been committed failing which the

jurisdiction to initiate any proceedings for contempt is lost. The heading of Section 20, is limitation for actions for contempt. Strictly speaking this section does not provide limitation in the Sense in which the term is understood in the Limitation Act, Section 5 of the Limitation Act also does not, therefore, apply. Section 20 strikes at the jurisdiction of the Court to Initiate any proceedings for contempt.

(Emphasis supplied)*

7. Section 20 of the Contempt of Courts Act is as follows :

20. Limitation for actions for contempt: No Court shall initiate any proceedings for contempt either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

8. Therefore, cardinal principle of the above Section is to initiate the proceedings for contempt not to adjudicate the proceedings. But if I Interpret the Supreme Court judgment correctly it will come out that even if such application is taken out by a litigant within the prescribed period of one year from the date of alleged contempt and the time has expired by efflux of time during the pendency of such litigation in the Court without issuance of Rule, it will lose its force automatically. The Supreme Court has proceeded on the basis of heading of Section 20 of the Contempt of Courts Act which speaks of limitation for actions for contempt. Such heading, if read with the body of the Section one can clearly understand that the same is meant clearly not ambiguously for initiating the proceeding but not adjudicating the proceeding. Therefore, how the Court will deal with the matter of contempt is, entirely for the Court to do when such proceeding is initiated within one year period from the alleged contempt. Some Courts are normally issuing the Rule on the basis of prima facie observation so am I. But some Courts are admitting or issuing notices or issuing show cause etc. before coming to an appropriate conclusion. It is depending upon such Court in what way It will proceed. However, the real purpose is to evaluate the situation of contempt and pass appropriate order by apply ing its mind as early as possible. Therefore, if one Court thinks it is a fit case for issuance of notice or show cause only the other may think that issuance Rule to show cause as to why the contemnors should not be punished will have to be issued. Therefore," there cannot be any binding effect" upon the Court. Therefore, it will deal with the same within one year of initiation. In other words, con-tempt is a matter between Court and Con temner meaning thereby "the" Court and "the" contemner. The" Court is the best Judge how he deals with "the" contemner. If the initiation goes due to lapse of time the adjudication will go automatically. If the initiation is proper and within time, adjudication cannot go automatically but subject to satisfaction of Art. 215 of the Constitution of India. The basic element of the contempt procedures are of a summary nature and promptness is the essence of such proceedings. Any delay should be fatal to such proceedings, though there may be exceptional cases when the delay may have to be overlooked but such cases should be very

rare indeed. The very purpose of incorporation of Section 20 in the Contempt of Courts Act, 1971 is to expedite the contempt proceedings. Joint Select Committee of Parliament on Contempt of Court felt so to introduce the same in the Bill which is ultimately formed a period of limitation of the actions for contempt u/s 20. Relevant part of Clause 20 of the Bill is as follows :

The Committee are of the opinion that contempt procedures by their very nature should be initiated and dealt with as early as possible. It was brought to the notice of the Committee that in some cases contempt proceedings have been initiated long after the alleged contempt had taken place. The Committee therefore consider it "necessary and desirable that a period of limitation should be specified in respect of actions for contempt and have accordingly laid down in the new clause a period of one year at the expiration of which no proceedings for contempt should be initiated.

(Emphasis supplied)*

9. Article 215 of Constitution of India speaks that every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. The Supreme Court of India itself in a judgment reported In Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, held as follows :

The power of the Supreme Court and the High Court being the Courts of record as embodied Under Art 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the contempt of Courts Act. Their inherent power is elastic, unfettered and not subjected to any limit. The power conferred upon the Supreme Court and the High Court, being Courts of record Under Arts. 129 and 215 of the Constitution respectively is an Inherent power and the jurisdiction vested is a subject one not derived from any other statute but derived only from Arts. 129 and 215 of the Constitution of India and therefore, the Constitution vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner, should be made aware of the charge against him and given a reasonable opportunity to defend himself.

(Emphasis supplied)*

Where the contemner has been served with a notice of contempt and thereafter permitted to go through the records and finally has been afforded a fair opportunity of putting forth his explanation for the charge levelled against him it could not be said that the order holding him guilty of committing contempt is vitiated by procedural irregularities.

(Emphasis supplied)*

10. I cannot find any reference of Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, in the referred judgment being Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], . Therefore, though under normal circumstances the later judgment will be followed but for the situation envisaged hereunder specially in connection with the authority of High Court Under Art. 215 of the Constitution of India as expressed in the earlier judgment, High Court has no other alternative but to follow the same unless and until the same is clarified by the appropriate Court.

11. In the aid of such observation I have to say that each and every High Court has its own Rules of contempt following the Contempt of Courts Act, 1971. The Calcutta High Court Contempt of Courts Rules were introduced in 1975 by notification No. 10171-G dated 22nd August, 1975 in exercise of powers conferred by Section 23 of the Contempt of Court Act, 1971 and by Art. 215 of the Constitution of India. I find that the Supreme Court or as the case may be any High Court may make Rules, not inconsistent with the provisions of this Act providing for a matter relating to its procedure. Having gone through Rule 19 of the said Rules I find that the Court may issue Rule Nisi, or the Court may summarily reject the petition or Court may make Such order there upon as thought fit. If today by virtue of the interpretation of Section 20 of the Contempt of Courts Act 1971 I hold that without issuance of the Rule, contempt proceeding cannot be said to be initiated then I have to hold first that such Rules framed u/s 23 of the Act and Art. 215 of the Constitution of India rendered infructuous when the ratio of Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, is expressly binding.

12. In any event Court is to be cautious in using such weapon of contempt. Such weapon shall be used by the Court sparingly upon observing the situation not only to the extent that the petitioner with ill motive invoked the jurisdiction of the Court or not but also whether the power of the Court under the contempt jurisdiction has been exercised Or afforded to use as a weapon of passing an interlocutory or executory order as per their wishful desire or not. This cannot be treated as a mode of alternative remedy. Discretion is to be made only for the purpose of upholding the dignity and Majesty of the court when element of wilful disobedience or over-reaching the order of the Court is visible. Even negligence and carelessness in implementing Court's order may amount to contempt particularly when attention is drawn to implement the order. However, casual, accidental, bona fide or unintentional Acts or genuine inability to comply With the order is not wilful disobedience. The reasons as given above are the true import of the Supreme Court judgments as reported in R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, and Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, .

13. Against this background now I have to evaluate the allegations of the petitioners under the contempt application being CPAN 1922 of 2000. The true

Import of the said original order which had passed on 29th January, 1998 is to restrain the authority from filling up the vacancies of forest Guards from outsiders whose names have been recommended by the Employment Exchange and from Efficient National Volunteer Force personnel etc. The petitioners along with the others admittedly got regularisation of their service in the posts of Group "D" staffs i.e. "Bono Sramit" from their casual status which was the true import of the main writ petition and the authorities with a bona fide intention now inclined to promote them into the stage of Forest Guard. Since, the authorities have not tried to fill up the vacancies from the outside sources as apparent from the departmental orders dated 4th January, 2000 and 19th January, 2000, it cannot be said to be any deliberate wilful disobedience of the order of the Court or trying to overreach the same to frustrate the true import of the order of the Court. Had it been the position that the vacancies of the Forest Guard are being filled up from the outside agencies without the leave of the Court during the continuance of the interim order it would have been a different question altogether and it is needless to say that in such circumstances contempt Rule could have been issued. The position is not the same. Therefore, contempt application being CPN 1922 of 2000 stands dismissed on merit. However, no order is passed as to costs.

14. I have clarified hereunder that the contempt application is dismissed on merit. Therefore, applicability of the principle analogous to *res judicata* as discussed under (1998) 2 Cal LJ 463 : 1999 AIHC 409 (Sudhir Kr. Sarkar v. M/s. Bharat Sheet Metal Industries Ltd.) becomes purely academic. In any event since the petitioners did not want to press the earlier contempt applications being CPAN 1648 of 2000 as well as application for incorporation for additional grounds under CAN No. 810 of 2000 now in view of the circumstances, those applications are also dismissed as infructuous without imposition of any costs.

15. So far the CAN No. 1311 of 2000 being an application for vacating interim order made on "behalf of the respondent authorities is concerned I do not find any reason that the same should be allowed at this belated stage when their own plea is that they have knowledge of the order and complied with the same. Therefore, the same is also dismissed.

16. Moreover, at this stage a plea has been taken by the respondent authorities that the appropriate State Administrative Tribunal is the forum for adjudication of the main matters I hereby direct the Registrar General/Registrar Appellate Side to transfer the records there as expeditiously as possible. In any event parties are at liberty to make any application afresh in connection with similar or any appropriate relief there for the purpose of protecting their interests.

17. Let an. urgent xerox certified copy of this order, if applied for, be given to the Ld. Advocates for the parties within two weeks from the date of putting of the requisities.

* Emphasis not found in Certified copy.-Ed.

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