

(1994) 11 GAU CK 0012
In the Gauhati High Court
Case No : Civil Original (C) No. 173 of 1994

Chihansing Horam

APPELLANT

Vs

I. Bijoy Singh, Chairman, MPSC and Another

RESPONDENT

Date of Decision : 18-11-1994

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 2

Citation : (1995) 1 GLR 236

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : Y.Z. Shimray and Th. Ibohal Singh, for the Appellant; Th. Priyananda Singh, for the Respondent

Judgement

H.K. Sema, J.—These two contempt petitions have been Tiled u/s 2 of the contempt of Courts Act read with Article 215 of the Constitution for initiating a contempt proceeding against the contemnors, Shri I. Bijoy Singh, Acting Chairman of Manipur Public Service Commission, and Shri Ng. Woleng, Secretary, Manipur Public Service Commission for wilful violation of the interim order passed by this Court on 21.9.94 in Civil Rule No. 1035 of 1994 and the interim order dated 23.9.94 passed by this Court in C.R. No. 1061/94.

2. I have heard Mr. Y.Z. Shimray, learned Counsel for the Petitioners in Contempt petition No. 171/94 and Mr. Th. Ibohal Singh in contempt petition No. 173/94 and Mr. Th. Priyananda Singh, learned Counsel for the contemnors in both the contempt petitions.

3. this Court on 21.9.94 passed an order in Civil Rule No. 1035/94 in terms of the following:

Heard Mr. Ibohal Singh, the learned Counsel for the Petitioner. Mr. K.I. Singh accepts notice on behalf of the Respondent No. 1 State of Manipur, None represents on behalf of the Respondent No. 2, Manipur Public Service Commission.

Considering the fact that many of the cases are registered in which Manipur Public Service Commission is made a party, Respondent, it is desirable that the M.P.S.C. should have some standing counsel of his own to represent the interest of the Commission.

Issue notice of motion calling upon the Respondents to show cause as to why rule should not be issued as prayed for or why such further or other orders should not be passed as to this Court may deem fit and proper. The notice is made returnable by the 23 Sept. 1994.

Petitioner is directed to serve notice personally upon Respondent No. 2.

It is submitted by Mr. Ibohal Singh that the examination is going to be conducted on 25.9.94. In the meantime, the Respondent No. 2, M.P.S.C. is directed to issue Admit Card to the Petitioner for the examination to be conducted on 25.9.94. The result of the written test in respect of the Petitioner shall not, however, be published until further orders from this Court.

(emphasis supplied).

4. Again on 23.9.94 this Court in Civil Rule No. 1061/94 passed an order in terms of the following:

Heard Mr. Y.Z, Shimray, learned Counsel for the Petitioners. None appears on behalf of the Respondent. Petitioner is directed to serve notice upon the Respondent No. 1 by registered post.

Call for the records.

Let a rule issue calling upon the Respondents to show cause as to why a writ should not be issued as prayed for or why such further or other orders should not be passed as to this Court may seem fit and proper. The rule is made returnable within a month.

In the meantime, the Respondent No. 1, Manipur Service Commission is directed to issue Admit Cards to the Petitioners, Shri Chiehansing Horam, 2 A.S. Mongprao, and 3 A.S. Alias for the ensuing examination for recruitment to the post of MCS Grade-II and MPS Grade-II starting from 25th Sept. '94. However, the result of the written test examination of the. Petitioners shall not be announced until further order from this Court.

(emphasis supplied).

5. These two contempt petitions have been filed on the ground that the aforesaid-two interim orders passed by this Court have been wilfully violated by the contemnors.

6. Respondents 1 and 2 have filed counter in both the contempt petitions. The counters on behalf of the Respondents are substantially the same in both the petitions. The defence set up by the contemnors in their counters are in paragraphs 5.1., 5.2., 5.3., and in paragraph S of (he counter filed by the

contemner No. 1 in Civil Orgl. (C) No. 171 of 1994 which are set out herein below for proper appreciation:

5.1. That, with reference to para No. 5 and 6 of the petition, it is denied that the Petitioners approached the Commission for taking admit card for the said-Examination, on the contrary at no occasion the Petitioners approached the Respondents to collect any Admit Card and accordingly, it is submitted that the allegations in this para are vague and are devoid of materials particulars. It is also denied that there has been any wilful or intentional disobedience on behalf of or by any of the Respondents.

5.2. It is an established principle of law that, the burden of a Contempt petition is that of the prosecution in a Criminal case, and there cannot be or should not be any missing link and apart from that the intentional or deliberateness of the alleged Contemnners, are the deciding factors. Apart from lacking material particulars for proving the intention or deliberateness, the present petition has not even disclosed to whom or which officer, they had approached.

5.3 In the present case, the Petitioners simply alleged that the Respondent Contemnners had not complied with the direction of the Court without qualification of supportive facts which may constitute compliance or non-compliance. To constitute an allegation of fact, the Petitioners should have stated as to when and how they approached the Contemnners and how they demanded, the admit cards and also how and in what manner the Contemnners or which of them refused. In the absence of such facts and allegations, the allegation shall be deemed to have no reletable facts or allegations and therefore, an allegation without facts.

In fact, no demand for admit cards was ever reported to the answering contemnners before the Examination began. There was, therefore, no cause or occasion for compliance or non-compliance of the Court's direction.

(emphasis supplied).

8. That from the facts and circumstances of the case as narrated in Annexure-D/1 it is quite apparent that the obedience or due compliance of the order was quite impossible and due to the deliberate approach to the Hon''ble Court at the last hour it was also not possible to move either for vacation or modification of the interim order. As such no Contempt of the Court arises.

I beg to further submit that it is also a basic principle of Contempt proceeding that there should be ability to comply as such, there is no contempt in refusing to obey order therewith or the act ordered is beyond his control.

(emphasis supplied).

6. Apart from the aforesaid quoted paragraphs, reading the counter of the Contemnners as a whole, there is no whisper of apology, not speaking of tendering unqualified apology as is usual practice in Contempt proceedings.

7. Reading the aforesaid statements in paragraphs 5.1., 5.2., 5.3., and 8 in just a position the Defendant had not denied that they did not receive the interim order dated 21.9.94 passed by this Court. In point of fact the interim order passed on 21.9.94 was communicated to the contemnors on 22.9.94 is on records in Civil Rule No. 1035 of 1994. At this stage, I may also mention that one officer of the M.P.S.C. appeared before the court on 23.9.94 and through Shri L. Shyamkishore Singh Id. Addl. Govt. Advocate sought for clarification of the interim order, dated 21.9.94 as to whether the interim order covers to all the candidates who were refused to Issue admit cards by the Commission or only those candidates who obtained interim order from the court. this Court verbally clarified at the bar that the admit card should be issued only to those candidates who approached the court.

8. A reading of defence set up by the contemnors in the aforesaid paragraphs Would clearly show that the contemnors set up 3 (three) points in defence:

1. that the Petitioners had not approached the Commission for taking admit card for the said examination;

2. that there is no specific allegation to which of the contemnors the Petitioners had approached and demanded admit card and when and also in what manner the contemnors had refused to issue the admit card; and

3. that the interim order passed by the court was quite impossible to comply with and in the absence of ability to comply, refusal to comply such an order docs not constitute contempt.

9. Defence No. 1. I am unable to accept the defence No. 1 put up by the, contemnors for more than one reasons. Firstly, it is categorically averred in paragraph 5 of the petition that (he Petitioner's had approached the Commission for taking Petitioner's admit card for the ensuing examination, but the Petitioner learnt that the Chairman and the Secretary (Contemnors) of M.P.S.C. had decided not to comply with the interim order dated 21.9.94 passed by this Court. Secondly, it is too hard to believe that the Petitioner who took pain in approaching the Court with petition and getting the interim order would not approach the Commission for issuing admit card on the basis of the interim order inasmuch as in the present juncture securing public employment is hard pressed for an educated unemployed youth. No man with proper frame of mind in ordinary circumstances would accept such a statement as made by the contemnors in the present case. At best it can be termed as a false statement in order to circumvent the order passed by the court, deliberately. It is sin against sinned, a contempt against contempt. I have no reason to doubt the statement made by the Petitioner in paragraph 5 of the petition that they approached the Commission for issuing admit card and that the Chairman and the Secretary of the Commission refused to comply with the interim order passed by this Court.

Defence No. 2. Once it has been established that the order of the court was in the knowledge of the contemnors and once it is established that the contemnors

deliberately/wilfully refused to carry out the order passed by the court despite of the knowledge of the court order it is not necessary to establish as to how and why and by whom the court order was not implemented. In fact how and why the court order is not implemented, the onus lies upon the contemnors to explain and not the Petitioner. Also since the authority directed was the Manipur Public Service Commission, it is the Chairman and the Secretary of the Commission who are responsible for not carrying out the order and as such they are being arrayed as party Respondents for wilful disobedience of the order passed by the court. The fact that the contemner refuses to obey the court order is admitted by the contemner No. 1 in paragraph 8 of the counter.

Defence No. 3. It is also extremely difficult to accept that the interim order of the court was quite impossible to carry out in the facts and circumstances of this case. The interim order dated 21.9.94 and 23.9.94 as quoted above was very simple and I do not see any difficulty in carrying out the aforesaid orders. In fact, by the aforesaid order the interest of both the parties were well taken care of. It was balance order. By that interim order, the main prayer of the Petitioner was not allowed finally. At any time, the contemnors could have approached the court for modification, alteration and vacation. By an order dated 21.9.94 a notice was issued to the contemnors making it returnable on 23.9.94 and in fact the notice was duly served upon the contemner on 22.9.94. Office of the contemnors appeared before the court on 23.9.94 and sought for clarification as stated earlier. No step was taken on 23.9.94 for modification, alteration or cancellation of the interim order passed on 21.9.94. Therefore, from the conduct of the contemnors it would clearly appear that they were sitting over the court order, feigning ignorance about the gravity of the consequences of not complying with the court order. It has also been brought to my notice at the time of hearing that instead of complying with the court order of to take step for modification, alteration or vacation of the interim orders, the contemnors were sitting over the court order, and preferred an appeal belatedly registered as writ appeal No. (T). 944/94 which was dismissed by the Division Bench of this Court on 28.9.94

10. The conspectus of facts as narrated above would no doubt to show that the contemnors deliberately/wilfully disobeyed the order of the court. The statement that the Petitioners deliberately approached the court at the last hour and there was no time for the contemnors to apply for vacation, modification or alteration of the order is belied by the facts of the case. As already stated by an interim order dated 21.9.94 notice was issued upon the contemnors making it returnable on 23.9.94. Respondents (Contemnors) received notice on 22.9.94 and appeared before the court on 23.9.94 and sought for clarification. No step was taken on 23.9.94 for modification or alteration of the interim order passed on 21.9.94. If the Respondents really faces difficulties or impossibility to carry out the interim order passed on 21.9.94 as contended by them, they could have easily apply for modification or cancellation of the order on 23.9.94. The examination for which the Petitioner seeks for admit card was to begin on 25.9.94, the interim order was passed on 21.9.94, therefore, there was enough lime for the contemnors to

approach the court for vacation, alteration or modification of the interim order. This also would show that the contemnors instead of taking steps deliberately/wilfully sleeping over the orders of the court and refused to comply. The deliberate wilful disobedience of the court order is, therefore, well established against the contemnors beyond all reasonable doubt. In a contempt proceeding, it is not necessary to establish deliberate or wilful disobedience of the court order independently. It is enough if from the conduct of the contemnors the wilful or deliberate disobedience is established. In the instant contempt proceeding, there is no manner of doubt that from the conduct of the contemnors, as recited above, the contemnors have wilfully and deliberately disobeyed to carry out the court order.

11. It is more disturbing, because the contempt has been wilfully committed by a Statutory authority which is recognised under the Constitution. Complying of the court order is a constitutional obligation. If the constitutional functionary refuses to deliberately/wilfully comply with the court order, what would be the opinion of the common people? Such conduct of the constitutional functionary shakes the public confidence in the administration of justice. The entire process of check and balance system and power of judicial review would be landed in chaos. We can understand if a rustic villager refuses to carry out the court order because of ignorance of the consequences, it is pardonable, but not so in the case of a statutory body like constitutional functionary, because by virtue of their position they cannot plead ignorance. It is true that the Commission is a statutory body and have wide powers under the Constitution but the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the provision of the Constitution and well established principles. The gravity would be more in case of an authority who despite having the knowledge of the implication and consequences of the court order, deliberately violates the same and once it is established, they deserve no mercy.

12. In view of what has been stated above, I shall constrain to carry out a painful duty. It is not in our interest nor in the interest of public to send somebody to Jail, but in a compelling circumstances as in the present case, I am persuaded to carry out a painful duty. The contemner No. 1, Shri I. Bijoy Singh, and Contemner No. 2, Shri Ng. Waleng are accordingly, sentenced to simple imprisonment of 5 (five) days and a fine of Rs. 1,000/- each, in default, further imprisonment for 2 (two) days.

13. The Superintendent of Police, Imphal Dist, is directed to execute the order forthwith.

14. Registry is directed to communicate the order today itself.

18/11/94 Prayer has been made by Mr. Th. Priyananda Singh for suspension of the judgment and order to enable the contemner to prefer an appeal against the judgment. The judgment and order shall stand suspended for a period of 10 days from today.

21/11/94 In view of the provision made in Section 12 of the Contempt of Court's Act and in view of the provision made in Gauhati High Court Rules with regard to the execution of the order passed by the Court in a Contempt proceeding, the last sentence of the judgment in Paragraph 12 and paragraph 14 is modified to the extent that Contemner No. 1 and 2 shall be sentenced to detention in Civil prison for a period of 5 days and a fine of Rs. 1000/- each I.D. further imprisonment for 2 days.

Registrar is directed to take necessary steps for execution of the order.

In view of the order aforesaid the interim order passed on 18.11.94 suspending the judgment for a period of 10 days from that day is modified to the extent for a period of 10 days w.e.f. today.

Registry is directed to notify to the parties.