

(1998) 05 GAU CK 0029

In the Gauhati High Court

Case No : Civil Original (Contempt) Petition No. 8 (K) of 1997

Confederation of All Nagaland State Services Employees
Association

APPELLANT

Vs

E.T. Sunup and Another

RESPONDENT

Date of Decision : 26-05-1998

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 12, 13

Citation : (1998) CriLJ 3451 : (1998) 2 GLT 239

Hon'ble Judges : W.A. Shishak, J;H.K. Sema, J

Bench : Division Bench

Advocate : A. Zhimomi and G.A. Shimray, for the Appellant; Imjang Jamir, Sr. Govt. Advocate, for the Respondent

Judgement

H.K. Sema, J.—By this petition under Sections 12 and 13 of the Contempt of Court's Act, 1971 read with Article 215 of the Constitution of India, the petitioner prayed for punishing the contemnors for their wilful, deliberate and intentional violation of the judgment dated 25-2-1997 passed in Civil Rule No. 40(K)/96 and the judgment dated 25-2-1997 in Civil Original (Contempt) Petition No. 17(K)/96. This is the second contempt petition against the contemnors for the same cause of action.

2. This case has chequered history and the facts leading to the filing of the present contempt petition may be briefly recited.

3. By a W.T. Message dated 30th Dec, 1995, the State Government in the Department of Finance stopped all the State Government payments except salaries and pensions. This message is relevant and brief is extracted below :- ,

No. BUD/1-2/95-96 DTD 30-12-1995(.) STOP ALL STATES GOVT. PAYMENTS RPT STOP ALL STATE GOVT. PAYMENTS WITH IMMEDIATE EFFECT "UNTIL FURTHER ORDERS EXCEPT SALARIES AND PENSIONS FOR" DECEMBER, 1995 TO BE PAID

FROM 5-1-1996 RPT 5-1-1996. ONWARDS (.) NO OTHER PAYMENT RPT NO OTHER PAYMENT SHALL BE ALLOWED EVEN AGAINST DRAWAL AUTHORITIES ALREADY ISSUED UNTIL FURTHER ORDERS (.) PLEASE CONFIRM STRICT COMPLIANCE (.)

4. By another W.T. Message dated 30th Jan., 1996, the ban imposed was relaxed with regard to payment of salaries to regular staff, pension, including arrear of pension, leave encashment and G.I.S. of retired Government employees.

5. By another W.T. Message dated 29th Sept., 1994, it was stated that no application for special relaxation of G.P.F. will be entertained. The message is brief and it is extracted :-

No. FIN/GEN/39/93 : DT. KMA the 29th Sept., '94 (.) NO APPLICATION FOR SPECIAL RELAXATION OF G.P.F. WILL BE ENTERTAINED TILL FINANCIAL POSITION IMPROVES(.)REQUEST NOT TO FORWARD ANY APPLN DURING OCT., '94.

6. The aforesaid 3 (three) orders have been challenged by the Confederation of All Nagaland State Services Employees Association (in short CANSSEA) by filing Civil Rule No. 40(K)/96 through its General Secretary. The main grievance of the writ petitioner was with regard to banning of withdrawal of General Provident Fund (in short GPF) subscribed by the Government servants.

7. While issuing a rule returnable within 6 (six) weeks, this Court on 17-5-1996 after hearing counsel of both side passed an interim order in terms of the following :-

In the facts and circumstances of this case and in the light of submission made at the Bar I am of the view that an interim order has become necessary. Accordingly, the impugned order dated 30-12-1995 issued by the Finance Department in so far as it concerns withdrawal of G.P.F. money shall remain suspended until further orders.

8. The aforesaid interim order having not been complied with, petitioner's Association filed a contempt petition registered as Civil Original (Contempt) Petition No. 17(K)/96 in which the present contemner Shri E. T. Sunup, Financial Commissioner, Government of Nagaland, Kohima was arrayed as respondent No. 1. Notice was issued to the contemner on 21-8-1996 and he has filed counter showing cause. In the meantime, the main Civil Rule namely Civil Rule No. 40(K)/96 was ready for hearing and therefore, this Court ordered both the Civil Rule and Contempt Petition to be heard together and both the petitions were disposed of by this Court on 25-2-1997.

9. Civil Rule No. 40(K)/96 was finally disposed off by this Court on 25-2-1997 allowing the petition in terms of the following orders in paragraphs 14 and 15 of its judgment:-

14. Having said enough, this petition is disposed with the following directions :-

(a) Second respondent is directed to lift the ban with regard to withdrawal/

advance of G.P.F. within a week from the date of receipt of this order.

(b) The G.P.F. withdrawal/advance shall be allowed only after submission of statements with regard to the availability of the amount in the credit of the subscriber.

(c) Every Treasury Officer shall, before honouring of withdrawal/advance of G.P.F. insist that latest statement showing the accounts in the credit of the subscriber are made available before him.

(d) The Accountant General shall see that the latest statements are issued correctly and on the basis of actual subscription subscribed by the subscriber.

(e) Every Head of the Department shall also see that before they forward the application of G.P.F. withdrawal/advance, the latest statement indicating the availability of money in the credit of the subscriber is made available.

15. The orders dated 30th December, 1995, 30th Jan., '96 and 29th September, 1994 at Annexure-A, B and C is accordingly quashed in so far with regard to the withdrawal/advance of G.P. Fund.

10. this Court disposed of Civil Original (Contempt) Petition No. 17(K)/96 on 25-2-1997 after perusal of the counter filed by the contemner. In paragraph 4 of the judgment, this Court has held that the contemner has made a misleading statement in paragraph 3 of the counter because it has been categorically stated by the contemner in paragraph 3 of the counter that the impugned W.T. Message dated 30-12-1995 was effectively withdrawn. However, the order with drawing the ban imposed on 30-12-1995 has not been produced by the contemner.

11. Finally, the Contempt Petition No. 17(K)/96 was also disposed off on the same day i.e. 25-2-1997 in terms of the following order in paragraph 5 of its judgment.

5. this Court has given 7 (seven) days time from the date of receipt of the order to the contemnors to lift the ban imposed on withdrawal/advance of G.P. Fund on 30-12-1995. Contemnors also in paragraph 8 of its counter tender unqualified apology if there is some omission or commission which might have taken place in giving to the effect or order of this Court. Contemnors also categorically averred that he has the highest respect for this Court and he has no intention of showing any disregard or disobedience to any order or direction passed by the Court. Whenever the direction of this Court is not carried out to its logical conclusion, it is the Rule of law that suffers. Carrying out the order of this Court is an enforcement of the Rule of law. We, therefore, insist that our order should be carried out to enforce the Rule of law. However, although the contempt has been made out, in view of the averment made in paragraph 8 of the counter by contemnors tendering unqualified apology, this Court with great hesitation accept the unqualified apology tendered by the contemner keeping in view that the Court has already directed the contemnors to lift the ban on withdrawal/advance of G.P.F. imposed on 30-12-1995 and 29th September, 1994 passed in Civil Rules

40(K)/96.

12. Despite of the two orders aforesaid, contemner has not complied with the order passed by this Court and hence this second contempt petition. In the present contempt petition, notice was issued to the contemner and he has also filed counter.

13. It is contended by Mr. A. Zhimomi, learned Counsel for the petitioner that the contemner has deliberately, wilfully and with intent to undermine the dignity and majesty of the Court thereby bringing the authority and the administration of law into disrespect in the estimation of public and as such, he deserves deterrent punishment. On the other hand, Mr. Imjang Jamif appearing on behalf of the contemner submits that contemner did not receive the copy of the judgment said to have been violated in time and the contemner has also preferred an appeal and obtained a stay order from the Appellate Court, arresting the operation of the impugned judgment said to have been violated by the contemner and as such, no contempt has been made out. It is further contended by Mr. I. Jamir that if any omission or commission which might have taken place in giving effect to the direction of this Court, the contemner has tendered an unconditional, apology and the same may be accepted.

14. The contemner No. 1 justifying his action in not complying with the Court's order stated in paragraph 4 of its affidavit as under :-

4. That with regard to the statements made in paragraphs 4 and 5 of the petition, the deponent respectfully submits that the Hon'ble High Court order dated 25-2-1997 directed that the ban with regard to withdrawal/advance of GPF be lifted within a week from the date of receipt of the order. The deponent respectfully submits that the judgment dated 25-2-1997 was forwarded by the Registrar (Admn.) vide his letter No. 308-09 dated 3-3-1997 to the Government which was received in the Finance Department only on 2-4-1997. Until receipt of the judgment and order dated 25-2-1997 on 2-4-1997, the respondent was in complete darkness about the said High Court order.

It is respectfully submitted that before the said impugned order was received on 2-4-1997, the respondent Government preferred an appeal before the Principal Seat on 26-3-1997 and the Hon'ble High Court (Principal Bench) passed an order dated 28-5-1997 staying the impugned order dated 25-2-1997 passed in Civil Rule 40(K)/ 96.

15. The averment made by the contemner in paragraph 4 of its affidavit is in a well guarded language and contradictory just to avoid the punishment. It is admitted by the contemner himself that the copy of the judgment & Order dated 25-2-1997 was forwarded by the Registry vide letter No. 308-09 dated 3-3-97 which was received in the Finance Department only on 2-4-97. It is highly unbelievable that a copy of the judgment sent by the Registry on 3-3-97 would reach the Deptt. only on 2-4-97 in a small town like Kohima. This apart, the averment made by the contemner in para 4 of its affidavit on oath is belied by

the Peon Book of the Registry. The Peon Book of this Registry shows that the copy of the judgment was received in the Department on the same day i.e., 3-3-97. Contemner also stated that before the impugned judgment and order was received on 2-4-97, the Government preferred an appeal before the Principal Seat on 26-3-97. How is it possible ? Without a copy of the judgment how could the State Government go and appeal before the appellate Court on 26-3-97? This would clearly show that the contemner received the judgment & order dated 25-2-1997 passed in Civil Rule No. 40(K)/96 only on 2-4-97 is not correct. Which one of the statement is to be believed, whether he has received it on 26-3-97 or 2-4-97? From the contradictory statement made by the contemner in paragraph 4 of its affidavit is itself enough to demolish the averment made in paragraph 4 of the affidavit that the judgment copy was received only on 2-4-97.

16. As already stated, the Peon Book of the Registry shows that the judgment & order dated 25-2-97 was delivered to the Department on 3-3-97 itself. The averment made by the contemner in para 4 of its affidavit that he has received a copy of the judgment only on 2-4-97 is again belied by his own statement that he preferred an appeal before the Principal Seat on 26-3-97.

17. At this stage, we may also consider the Misc. Application No. 20(K)/98 filed by the contemner on 14-5-98 by way of clarification after the argument of this case has been finally concluded on 6-5-98. In Misc. Case No. 20(K)/98, the contemner stated in paragraph 4 as under :-

4. That your humble applicant respectfully submits that taking into consideration the serious nature of the case, the learned Senior Government Advocate, applied for a certified true copy of the judgment dated 25-2-97 on 1-3-97 and obtained it the same day. The senior Govt. Advocate, tried to meet the F.C. personally to hand over the copy of the CTC dated 1-3-97. However, the F.C. was out of Station on official duty at that particular moment of time.

The Senior Govt. Advocate could meet the F.C. sometime in the third week of March '97 only. However, the F.C. was still in the dark about the judgment dated 25-2-97, till that time. On the CTC dated 1-3-1997, being handed over to the F.C, the F.C. immediately summoned all departmental Officers to examine the direction of this Hon'ble High Court, and consulted the Secretary Law & Justice. On finding no alternative, the F.C. decided to take up the case in appeal before the Principal Seat at Guwahati.

18. The averment made in paragraph 4 as referred to above made the contemner's case further worse. At the best, this is an attempt to fill up the contradictory statement made by him in paragraph 4 of the main affidavit. This also clearly exposed the contemner shifting stands with every affidavit filed by him to avoid the punishment. Let us assume that the contemner received the copy of the judgment in the 3rd week of March '97 as contended by him. No step whatsoever has been taken by the contemner either by filing an application or by oral prayer asking extension of time to comply with the Court's order or for

filing an appeal before the appellate Court. The Appellate Court's order was obtained only on 28-5-97. Accepting his stand, at least in the third week of March '97, he was having a certified true copy of the order directing him to lift the ban of GPF withdrawal within a week from the date of receipt of the order. From 3rd week of March till 28-5-97, the date on which the appellate Court's order was obtained, the direction in the judgment dated 25-2-97 was flouted. Therefore, the contemner after the receipt of the Court's order just ignored it thereby wilfully and deliberately flouted the Court order undermining the dignity and the majesty of the Court in the estimation of public.

19. As already said, the Peon Book of this Registry disclosed that the copy of the judgment was delivered to the Department on 3-3-97. The contemner also admitted in paragraph 4 of its affidavit that the copy of the judgment dated 25-2-1997 passed on Civil Rule No. 40(K)/96 has been forwarded by the Registry by its letter No. 308-09 dated 3-3-97 although he stated that the same was received only on 2-4-97 which this Court has already deprecated. We are, therefore, of the clear view that the copy of judgment dated 25-2-97 directing the contemner No. I herein to lift the ban with regard to the withdrawal/advance of GPF within a week from the date of receipt of the order was received on 3-9-97. On receipt of the judgment if the contemner No. 1 finds any difficulties or if he decides to prefer an appeal, he was under the obligation to make an application before this Court asking more time either to implement the order or to file an appeal before the Appellate Court. In the instant case, the period from 3-3-97 the date on which the copy of the judgment was received and 28-5-97 the date on which the Appellate Court passed an order suspending the order dated 25-2-97, the contemner has deliberately, wilfully and with intend to undermine the authority and majesty of the Court in the estimation of the public violates the Court's order. Clearly, therefore, before the order dated 28-5-97 of the Appellate Court is obtained in writ Appeal No. 262/97, Contempt of the order dated" 25-2-1997 has been completed. Contemner has also stated in paragraph 7 of its affidavit that he has highest regard for this Hon"ble Court and he has no intention to disregard or disobedience to any order or direction passed by this Court and the contemner also tendered an unconditional apology in the event of any commission or omission which might have taken place in giving effect to the direction issued by this Court. This is only a lip statement to avoid the punishment.

20. As already stated, this contemner has violated the interim order passed by this Court on 17-5-96 for which a contempt petition No. 17(K)/96 was initiated against the contemner and the same was disposed of on 25-2-1997 along with the main Civil Rule with a caution that he should not repeat it again. In that case, this Court had held that although the contempt has been made out, the unqualified apology tendered by the contemnors were accepted keeping in mind the direction issued by this Court in the main Civil Rule directing the contemner to lift the ban of withdrawal of GPF within a week from the date of receipt of the order. From the repeated conduct of the contemner as referred to above, we are

clearly of the view that he has no regard to the dignity and majesty of the law and he has wilfully and deliberately disobeyed the Court's order thereby undermining the dignity and majesty of the Court. The statement that he has highest regard for the Court is a cruel hoax. Taking the totality of conduct of the contemner into consideration, it is beyond condonable limits and the unqualified apology tendered by the contemner is only to avoid the punishment and cannot be accepted. We are clearly of the view that the repeated conduct of the contemner is contumacious. It is a sin against sinned.

21. The hard facts are these :-

(a) Contemner violated the interim order passed by the Court on 17-5-96 while issuing a rule in C.R. No. 40(K)/96 resulting in filing of Civil Orgl. (Contpt) Petn. No. 17(K)/96.

(b) Both the C.R. No. 40(K)/96 and Contempt Petition No. 17(K)/96 were disposed of finally and separately on the same day by judgment & order dated 25-2-1997.

(c) The Court disposed of the Civil Rule on 25-2-97 with a direction to the contemner to lift the ban of the withdrawal of GPF/advance within a Week from the date of receipt of the order.

(d) Court also disposed of the Contempt Petition No. 17(K)/96 on 25-2-97 holding the contemner guilty of contempt, however, the unqualified apology tendered by him was accepted, with a note of caution that he should not repeat the same.

(e) Contemner flouted the Court's order dated 25-2-97 on the plea that copy of the Court's order forwarded by the Registry by its letter dated 3-3-97 was received by him only on 2-4-97.

(f) Contemner stated that he preferred an appeal before the Appellate Court against the judgment on 26-3-97.

(g) The Appellate Court's order was obtained on 28-5-97 in Writ Appeal No. 262/97, suspending the order dated 25-2-97.

(h) The Peon Book of the Registry shows that the copy of the judgment was delivered to the department on 3-3-97 itself.

(i) this Court hold that the contemner has received the copy of the judgment on 3-3-97 yet no steps has been taken to implement the Court's order as directed.

(j) No step was taken by the contemner either to comply with the Court's direction or seeking an extension of time to comply with the Court's direction or for filing an appeal before the Appellate Court from 3-3-97 the date on which the copy of the judgment dated 25-2-97 was delivered to the Department or before or after 26-3-97 on which date the contemner has stated that the appeal was preferred before the Appellate Court.

(k) It is also the case of the contemner that the copy of the judgment which was forwarded by the Registry on 3-3-97 was received by him only on 2-4-97 was highly unbelievable because Peon Book shows that the copy of judgment was delivered to the department on the same date i.e., 3-3-97. This apart, the contemner in paragraph 4 of its affidavit has specifically stated that he preferred an appeal before the Appellate Court on 26-3-1997. Without a copy of the judgment the filing of appeal could not have been possible.

(l) Contemner also filed Civil Misc. Application No. 20(K)/96 on 14-5-98 after the argument was finally closed on 6-5-98 and the judgment was kept reserved stating in paragraph 4 of the application that he has received certified true copy dated 1-3-97 of the judgment from Senior Government Advocate in the 3rd week of March '97.

In the facts and circumstances as stated above we accordingly hold that the contemner received the copy of the judgment on 3-3-97 but making an incorrect statement by shifting stands to avoid the punishment.

22. In Delhi Development Authority Vs. Skipper Construction and Another, it has been held by the Apex Court that intention or motive is not the criteria for deciding the question of contempt although it may be a relevant factor when it comes to imposition of punishment. It has been further held that mens rea is not necessary to constitute Contempt of Court. In cases of contempt, it is not the intention of the contemner but the effect of undermining or lowering the Court in the estimation of public is the real test. The test lies not in the object in the mind of the contemner but in the tendency which his outward act inherently possess and manifest in lowering the authority of the Court.

23. As already said in the instant case, the contemner by his own conduct wilfully and deliberately undermined the dignity of the Court in the estimation of public. The contemner also tends to bring the authority of the Court and administration of law into disrespect. The framers of the Constitution in their wisdom introduced checks and balances system devising three organs namely; Judiciary, Executive and Legislature. Judiciary exercise the sovereign judicial power of the State. Judiciary is the bed rock and hand maid of orderly and civilised society. If the people would lose faith in justice imparted by the Superior Court of the land, it would be dangerous to the civilised society. The fragment of civilised society would get broken up and crumble down, if the authority of superior Court are deliberately and wilfully undermined in the estimation of public, it would cause chaos and instead of solving problems through the Court of justice, it would create problems and the muscle power and street urchins would have a hay day. The power to punish the contemner for violation of its order is, therefore, granted to the Court not because Judges need the protection but because the citizens need an impartial and strong judiciary.

24. In U.P. Sales Tax Services Association Vs. Taxation Bar Association, Agra and others, it was pointed out by the Apex Court as under (at p. 3761-62 of AIR) :-

If rule of law is to have any meaning and content, the authority of the Court or a statutory authority and the confidence of the public in them should not be allowed to be shaken, diluted or undermined. The Courts of justice and all tribunals exercising judicial functions from the highest to the lower are by their constitution entrusted with functions directly connected with the administration of justice. It is that expectation and confidence of all those, who have or are likely to have business in that Court or tribunal, which should be maintained so that the Court/tribunal perform all their functions on a higher level of rectitude without fear or favour, affection or ill-will.

25. In *S.P. Gupta Vs. President of India and Others*, it was pointed out by the Apex Court in para 27 of its judgment at page 223 as under :-

if there is one principle which runs through the entire fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.

26. Every functionary of the State derives their powers from the Constitution and the rule of law. "Be you ever so high the law is above you." It is in this sense, governance is not of man but of the rule of law. Respect to the order passed by the Supreme Court is to uphold the dignity and majesty of law. In the instant case, we are surprised to see that the Court's order has been wilfully and deliberately flouted with intent to undermine the dignity and majesty of the Court in the estimation of public by the contemner who is a senior I.A.S. Officer holding the rank of Financial Commissioner. He being a senior IAS Officer, owes higher obligation than an ordinary citizen to advance the cause of public interest and to uphold the dignity and majesty of the Court, disrespect the same by flouting the order deliberately thereby undermining the majesty and dignity of the Court in the estimation of public.

27. As already said, the earlier contempt petition against the contemner was disposed of with a note of caution by accepting the unqualified apology tendered by the contemner but the same contemner has repeated the contumacious act in

the present petition. We would, now think a wrong signal was sent by accepting the unqualified apology tendered by the contemner in the previous contempt petition and he has accepted it as a license to commit contumacious act repeatedly. We are, therefore, of the clear view that the contemner deserves appropriate punishment.

28. Lastly, we are tempted to quote the observation of the Apex Court in J. Vasudevan Vs. T.R. Dhananjaya, this is what the Apex Court has said in paragraph 14 of its judgment:-

14. Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemner, the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unflinching faith of the people in the Courts remain intact. But, if the order of even the highest Court of the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the Court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death knell to the rule of law and social justice would receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to uphold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law. The fact that the petitioner is an I.A.S. Officer is of no consequence, so far as the sentence is concerned. We would indeed think that if a high officer indulges in an act of contempt, he deserves to be punished more rigorously, so that nobody would take to his head to violate Court's order. May we also say that a public officer, being a part of Government, owes higher obligation than an ordinary citizen to advance the cause of public interest, which requires maintenance of rule of law to protect which contemnors are punished.

29. Accordingly, we find the contemner No. 1 Shri E. T. Sunup, Financial Commissioner, Government of Nagaland guilty of committing contempt and sentence him to undergo simple imprisonment of 1 (one) month and also to pay a fine of Rs. 10,000/- (Rupees Ten thousand), in default. Further simple imprisonment of 1 (one) month.

30. Registry is directed to communicate this Order to the Director General of Police, Government of Nagaland. On receipt of the order, the Director General of Police, Nagaland shall implement/execute the order within a period of 30 (thirty) days and submit the compliance report to this Registry within 1 (one) week after

the expiry of 30 days.

31. Before parting with the record, we may state although one A.C. Saikia has been impleaded as party respondent No. 2 in this Contempt Petition, it appears that he was not impleaded as respondent in Civil Rule No. 40(K)96. Also while disposing of the Civil Rule on 25-2-97, this Court specifically directed the contemner No. 1 Shri, E.T. Sunup who has been impleaded as party respondent No. 2 in Civil Rule No. 40(K)96 to implement the order. It is also stated that during the pendency of this Contempt Petition, the respondent No. 2 has been retired on superannuation some time in the month of June/July 1997.

This Contempt petition in so far with regard to the respondent No. 2 may be treated as dropped.