

(1972) 09 AHC CK 0035

In the Allahabad High Court

Case No : Misc. Application No. 1038 of 1972 in Civil Misc. Writ No. 5467 of 1970

Dr. Madan Gopal Gupta

APPELLANT

Vs

The Agra University and Others

RESPONDENT

Date of Decision : 25-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 21
Contempt of Courts Act, 1971 — Section 3, 4

Citation : AIR 1974 All 39

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : M.K. Saraswat and Sudhir Chandra, for the Appellant; S.D. Agarwal, S.N. Kacker, U.K. Misra and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Pravin C. Shah Vs. K.A. Mohd. Ali and Another, AIR 2001 SC 3041 : (2002) 1 CompLJ 35 : (2001) 9 JT 46 : (2001) 7 SCALE 60 : (2001) 8 SCC 650 : (2001) 2 UJ 1542 : (2001) AIRSCW 4193 : (2001) 7 Supreme 386

K.N. Singh, J.—The petitioner Madan Gopal Gupta has filed the present application for striking out defence of the Agra University and its authorities in Writ Petition No. 5467 of 1970 filed by him challenging the validity of a resolution of the Executive Council of the Agra University dated 27th September, 1970, terminating his services from the post of Registrar of the University.

2. The petitioner was Registrar of the Agra University. Certain charges were framed against him which were enquired into by a committee constituted by the Executive Council of the University. On the findings recorded by the Enquiry Committee, the Executive Council of the University passed a resolution dated 27th September, 1970, terminating the petitioner's services. The petitioner thereupon filed writ petition before this Court under Article 226 of the Constitution (Writ Petition No. 5467 of 1970) challenging the said resolution of

the Executive Council on various grounds. One of the grounds raised by the petitioner was that the resolution of the Executive Council was vitiated because Sri Shital Prasad, the then Vice-Chancellor, and Sri L. N. Varshney, a Member of the Executive Council, had appeared as witnesses against the petitioner before the Committee of Enquiry and when the matter came up for final consideration before the Executive Council the said two persons participated in the meeting and held the charges proved against the petitioner. The Vice-Chancellor and L. N. Varshney, thus acted as witnesses as well as judges of their own cause. Allegations of mala fide were also made against the Vice-Chancellor.

3. The writ petition came up for final hearing before me in September, 1971, Arguments were heard for several days but before the arguments could conclude the hearing was adjourned due to the intervening Dashera holidays. It appears that the authorities of the University realised that the participation of Sri Shital Prasad, Vice-Chancellor, and Sri L. N. Varshney vitiated the resolution. They, therefore, took steps to remove the alleged infirmity. During the Dashera holidays the Executive Council of the University at its meeting held on 1st October, 1971, passed a unanimous resolution reiterating the earlier findings against the petitioner and reaffirming the resolution No. 175 of 27th September, 1970, terminating the petitioner's services. Sri Shital Prasad, Vice-Chancellor and Sri Varshney did not participate in the meeting held on 1st October, 1971. The University thus tried to remove the infirmity which had crept in the resolution of the Executive Council dated 27th September, 1970. The petitioner thereupon filed a contempt application in this Court against the Vice-Chancellor, the Officiating Registrar and sixteen members of the Executive Council of the Agra University who had participated in the meeting dated 1st October, 1971. The petitioner alleged that the object underlying the summoning of special meeting of 1st October, 1971, and the passing of the said resolution on that day was to influence the judicial proceedings pending before this Court in Writ Petition No. 5467 of 1970. During the contempt proceedings the hearing of the Writ Petition was adjourned, Brother T. Ramabhadran J. heard the contempt matter. By his order dated 29th November, 1971, Ramabhadran, J., held that Shital Prasad, Vice-Chancellor, and the Officiating Registrar were not guilty of contempt charge but the sixteen members of the Executive Council who attended the meeting of the Executive Council on 1st October, 1971, and passed the resolution against the petitioner were guilty of contempt. The sixteen members of the Executive Council (including respondents Nos. 4 to 10 to the Writ Petition) tendered unqualified apology which was accepted by Ramabhadran, J. and the notices issued against them were discharged and no penalty was imposed against them. The petitioner thereupon filed the present application before me with a prayer that since the respondents were held guilty of contempt of this Court, the defence of the University in the Writ Petition should be struck off. The University authorities, according to the petitioner, were not entitled to hearing unless the contempt was purged and the resolution dated 1st October, 1971, was withdrawn.

4. The petitioner further filed an application for amendment of the Writ Petition challenging the resolution of the University Executive Council dated 1st October, 1971. Respondents in the Writ Petition filed reply to the amendment application. They contended that the infirmity in the earlier resolution of the Executive Council dated 27th September, 1970, stood removed by the resolution dated 1st October, 1971. It was further alleged that the validity of the petitioner's removal from service should be considered in the light of the resolution passed by the Executive Council on 1st October, 1971. Thus the Executive Council has placed reliance on its resolution dated 1st October, 1971, which was the subject-matter of contempt proceedings before Ramabhadran, J.

5. Sri Shanti Bhushan, learned counsel for the petitioner, urged that the defence of the respondents to the Writ Petition should be struck off and they are not entitled to any hearing as they are persisting in their contempt by placing reliance on the resolution dated 1st October, 1971, Sri S. N. Kacker, learned counsel for the respondents on the contrary, urged that once the unqualified apology was accepted by the contempt Judge and notices were discharged, the contempt was purged and there was no ground for striking off the defence of the University. According to the learned counsel the University is entitled to rely on the resolution of the University dated 1st October, 1971, and in doing so the University was not committing any further contempt.

6. Under the Contempt of Courts Act, there is no provision for striking off the defence of a party in contempt. There is, however, a well established principle that a party in contempt should not be heard in the same cause until that party has purged the contempt. This rule has been followed by Courts in England as well as in India, but the rule is not an absolute one. The striking out of defence and denial of hearing to a party is a serious matter which entails serious consequences to a litigant. The Courts have, therefore, applied this rule rarely against a party in contempt. The extreme penalty of striking out of defence or denial of hearing is applied only in those cases in which a party is found in contempt for disobeying the orders of the Court as a result of which the course of justice is impeded. The Court may, in its discretion, refuse to allow the party in contempt to take active proceedings in the same suit or a cause until the impediment caused by the contemptuous act is removed. This rule is based on the sound principle that no party to a cause or proceeding should be allowed to flout the orders of the Court or impede the course of justice in order to take advantage of his misdeeds before the Court of law. In England, this rule was applied for the first time by the ecclesiastical courts. Subsequently this rule was made applicable by other Courts also.

7. The said principle has been codified in our country in Order XI, Rule 21 of the CPC which lays down that where any party fails to comply with an order of the Court to answer interrogatories or for discovery or inspection of documents, he shall be, if he is plaintiff, liable to have his suit dismissed, and, if the party is defendant, his defence is to be struck off and he may be placed in the same

position as if he had not defended. The extreme penalty of striking out of defence in a suit can, however, be imposed under the CPC only when there has been an order under Rule 11, or Rule 12 or Rule 18 of Order XI of the Code and the party concerned has failed to comply with the orders of the Court. Rule 21 of Order XI of the Code is also based on the principle that a party who disobeys the orders of the Court cannot take advantage of its disobedience in that very case before the Civil Court. In addition to the penalty of dismissal of suit and striking out of defence, the Court may further take action for punishing the defaulting party for contempt, if the disobedience is willful so as to impede the course of justice. As observed earlier there is no other statutory provision in our country for striking out the defence of a party in contempt. The statutory provision of Order XI, Rule 21 of the CPC is not applicable to the proceedings which are not regulated by the Code of Civil Procedure. The circumstances under which the petitioner has made this application for striking out the defence of the respondents are not contemplated or covered by the provisions under Order XI, Rule 21. That provision is not applicable to the present case. In my opinion, therefore, the provisions of Order XI, Rule 21 cannot be pressed into service in the present case.

8. In our country we have followed the English practice and the law in this respect has developed on the principles enunciated by English Courts. In *Hewit v. M^r Cartney* (1807) 13 Ves 560 Lord Eldon did not allow a defendant to appear and defend the cause against him, as the defendant was held guilty of contempt of Court. In *Seward v. Paterson*, (1897) 1 Ch 545 it was pointed out that a distinction must be drawn between a process to assist a party against the opponent who defies the orders of the Court and a process to maintain the dignity of the Court. In *Gordan v. Gordan*, (1904) P. 163, it was held that a party was not generally entitled to take a proceeding in a case for his own benefit but there are exceptions to the rule although they are few in number. The case of *Chuck v. Cremer*, (1846) 1 Cp 205 and the case of *King v. Brvant* (1838) M & 191 were cited. In *Morrison v. Morrison* (1845) 4 Hare 590 it was held that a defendant in contempt for non-payment of costs was entitled to file exceptions to a report but that was merely a step taken in his own way. The view taken in the above earlier English cases makes it clear that the principle adopted was that the Court would not hear a party in contempt coming himself to the Court to take advantage of the proceedings, yet such a party was entitled to appear and resist any proceeding against him. It has, however, been stressed by the English Judges that it would be most unjust extension of the rule against the party in contempt to take away an estate without giving him any opportunity of hearing.

9. The law on the subject has succinctly been stated in Halsbury's Laws of England, Simond's edition, page 42, paragraph 73 as under:

"The general rule is that a party in contempt, that is a party against whom a writ of attachment has issued or an order for committal has been made cannot be heard or take proceedings in the same cause until he has purged his contempt,

nor while he is in contempt can be heard to appeal from any order made in the cause; but this is subject to exceptions. Thus a party in contempt may apply to purge the contempt, he may appear with a view to setting aside the order in which his contempt is founded and in some cases he may be entitled to defend himself when some application is subsequently made against him. Even the plaintiff in contempt has been allowed to prosecute his action when the defendant had not applied to stay the proceedings. Probably the true rule is that the party in contempt will not be heard only on those occasions when his contempt impedes the course of justice and there is no other effective way of enforcing his obedience?

The above passage would make it clear that there is no absolute rule that the party in contempt shall not be heard. The correct position which has emerged from the various decisions appears to be that generally a party in contempt shall not be heard only in those cases where his contempt impedes the course of justice and there is no other way of enforcing the orders of the Court. In the case of *Hadkinson v. Hadkinson* (1952) 2 All ER 567 the Court of appeal in England reviewed the entire case law on the subject in detail. In that case, on a petition filed by wife for dissolution of her marriage, a decree nisi was granted by the Court and it was directed that the child should remain in the custody of his mother but he should not be removed out of the jurisdiction without the sanction of the Court. The mother subsequently remarried and without the sanction of the Court she removed the child to Australia. On an application by the father an order was made by the Court directing the mother to return the child within the jurisdiction of English Courts. The mother filed an appeal against the said order. The father raised a preliminary objection that the mother was not entitled to be heard in appeal as she was in contempt in removing the child out of the jurisdiction of the Court without its sanction in defiance of the order of the Court. After considering the question at length the Court of Appeal held that the mother was not entitled to be heard unless she had taken the first and essential steps towards purging her contempt by returning the child within the jurisdiction of the Court. Lord Denning considered a number of earlier English cases and thereafter observed as under:--

"Those cases seem to me to point the way to the modern rule. It is a strong thing for a Court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is a step which a Court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance. In this regard I would like to refer what Sir George Jessel, M. R. said in a similar connection in *Ree Clements & Costa Rica Republic v. Erlanger*. (1877) 46 LJ Ch 375.

"I have myself had on many occasions to consider this jurisdiction and I have always thought that necessary though it be, it is necessary only in a sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found. Probably that will be

discovered after consideration to be the true measure of the exercise of the jurisdiction.

Applying this principle I am of opinion that the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to his being heard, but his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the Court to ascertain the truth or to enforce the orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed."

10. Learned counsel for the petitioner relied upon the case of *Hadkinson v. Hadkinson* (1952) 2 All ER 567 (supra) in support of his contention that unless the respondents in the present case took steps to purge the contempt, they were not entitled to hearing and their defence in the Writ Petition was liable to be struck off. In my opinion, however, the true position which emerges from the cases discussed and from the celebrated opinion of Lord Denning is that unless the disobedience of a party impedes the course of justice in the case, making it difficult for the Court to ascertain the truth or to enforce its orders it would not be proper exercise of discretion to refuse the party in contempt any hearing. In the present case, admittedly no order of the Court was disobeyed by the respondents, nor there was the question of enforcement of any of the Court's orders. There is further no difficulty for this Court to ascertain the truth or to decide the questions involved in the writ petition. The respondents took an improper step in considering the questions on merit which were sub judice before this Court and thus they were held guilty of contempt of Court. The case of *Hadkinson v. Hadkinson*, in my opinion, does not lend any support to the petitioner's contention.

11. In *Sudhir Chandra Das Vs. Raseswari Chaudhurani*, it was held that a defendant in contempt cannot claim as of right the benefit of the procedure of the Court except for the sole purpose of defending himself, and how far, these rights extend was a matter for the discretion of the Court. Though the party cannot himself come into the Court to take any advantage of the proceedings in the cause yet he was entitled to appear and resist any proceeding against him. In *David Sassoon Ezekiel v. Najia Noori Reuben* AIR 1931 Bom 402 the application of the general rule that a party in contempt is not entitled to be heard, was not accepted and it was held that the rule did not apply to a case in which an order of Court was challenged on the ground of lack of jurisdiction. The appellant in that case was held justified in not carrying out the orders of the Court as in the opinion of the Bench the order of the trial Court was without jurisdiction.

12. The above authorities make it amply clear that the drastic step of striking out the defence, and denial of hearing to a party in contempt is an extreme penalty which is enforced only in those cases where an act of a party in contempt impedes the course of justice or that justice in the cause cannot be done without

compliance of the Court's order, but the party in contempt is entitled to challenge the validity of the order and the jurisdiction of the Court passing the order itself. The party in contempt may not be entitled to take advantage of its own action in the same cause without purging the contempt but such a party is entitled to defend itself. There is considerable difference in the right of a party in contempt for bringing an action into Court of law, and his right to defend himself before the Court. In former case, the party in contempt is not entitled to bring an action before a Court of law or to take advantage of its contemptuous act in the same cause or proceeding but in the latter case such a party is entitled to defend itself and to question the jurisdiction of the Court passing the order in respect of which contempt may have been committed. These are general principles, but it is difficult to lay down any exhaustive principles as the situation may vary from case to case. The question has to be considered by the Court concerned on the facts of each case. The Court may, in its discretion, not entail the extreme penalty of denial of right of hearing or striking out of defence of the party in contempt in the particular circumstances of a case. The principles, however, are now well settled for the exercise of discretion by the Courts. In the present case, as observed earlier, I do not find any justification for striking out the defence of the respondents. The petitioner has failed to show that the contemptuous act of the respondents has impeded the course of justice that it is not possible for this Court to ascertain the truth or to determine the issues involved in the Writ Petition. I am, therefore, not prepared to accept the petitioner's contention to deny opportunity of hearing to the respondents or to strike out their defence in the Writ Petition.

13. There is yet another reason to reject the petitioner's contention in the present case. It is well accepted principle that a party in contempt is entitled to hearing if it has purged its contempt. This view was accepted by the Court of Appeal in (1952) 2 All ER 567 (supra). The question then arises how a party in contempt is required to purge the contempt. Learned counsel for the petitioner has urged that the Executive Council of the University should withdraw its resolution dated 1st October, 1971, and restore the position of the parties as they were prior to that date. If that were done the contempt would be purged, otherwise the contempt continued, hence the respondents are not entitled to any hearing. I am not inclined to accept this contention. In my opinion a party in contempt purged its contempt by obeying the orders of the Court or by undergoing the penalty imposed by the Court. In the present case, no order of conviction was passed against the respondents. The Contempt Judge accepted the unqualified apology of the respondents and discharged the notices of contempt issued against them. By tendering unqualified apology the Members of the Executive Council purged their contempt and more so when the Contempt Judge accepted their apology. In *M.Y. Shareef and Another Vs. The Hon'ble Judges of The High Court of Nagpur and Others*, their Lordships held that the unqualified apology tendered by the two appellants in that case was sufficient to purge their contempt. The order of the High Court in refusing to accept the

apology or to regard the contempt as having been purged was set aside and it was held that the apology, if accepted, should be regarded sufficient to purge the contempt. The law laid down by the Supreme Court is fully applicable to the facts of the present case. The respondents' unqualified apology had been accepted by the learned Judge hearing the contempt application, hence the contempt was purged. Thereafter there was no continuance of the contemptuous act. Once the contempt is purged by a party, there is no rule of law permitting striking out of defence or denial of right of hearing to the party in contempt. Since the respondents have purged their contempt, by tendering unqualified apology, they are entitled to hearing and their defence cannot be struck off.

14. In the result the petitioner's application fails and is accordingly dismissed.