

(2012) 05 AHC CK 0295
In the Allahabad High Court
Case No : Contempt No. 1170 of 2012

Dr. Nutan Thakur

APPELLANT

Vs

Uday Kumar Verma, Secy, Ministry of Information and Others

RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a)
Contempt of Courts Act, 1971 — Section 12, 5
Press Council Act, 1978 — Section 13, 14(1)

Citation : (2012) 6 ADJ 589

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Advocate : Nutan Thakur, for the Appellant;

Final Decision : Dismissed

Judgement

Hon'ble Devendra Kumar Arora, J.—The applicant/ petitioner who claims herself a Journalist, preferred a writ petition in the nature of Public Interest Litigation (PIL) (W.P. No. 2685 (MB) of 2012) before this Court seeking a writ of mandamus directing the respondents viz Union of India through Principal Secretary, Prime Minister's Office, New Delhi to conduct an enquiry (preferably an enquiry by an Independent Judicial Commission) with respect to the news article dated 4.4.2012, published in "The Indian Express" newspaper (Annexure 1 to the Writ Petition) and another news item published in "The Sunday Guardian" newspaper (Annexure 5 to the Writ Petition) and take legal action against such persons as per the provisions of law. A Division Bench of this Court dismissed the writ petition vide order dated 10.4.2012 with the direction to the Secretary, Home Affairs, the Secretary, Information & Broadcasting, Government of India and the Principal Secretary, (Home), Government of U.P. to ensure that there is no reporting/release of any news item by the Print as well as Electronics Media relating to subject-matter, namely, the movement of troops as contained in the accompanying annexures enclosed therein. It would be useful to reproduce the final order dated 10.4.2012, which reads as under:

Hon"ble Uma Nath Singh, J.

Hon"ble Virendra Kumar Dixit, J.

Order (Oral)

We have heard petitioner in person and learned Assistant Solicitor General of India, Sri I.H. Farooqi, for Union of India.

The issue of movement of Army troops is not a matter of the kind which should require public discussion at the cost of defence official secrecy and the security of country. Petitioner, a social activist and freelance journalist, in her submissions expressed her grave concern over the media reportings on this subject which, if permitted to continue, may seriously interfere with the handling of security matters by Army, particularly the movements of troops from the strategic point of view in the field as well as peace areas. Thus, without interfering with the independence of media and keeping in view the fact that the news items relating to movements of troops have already engaged the attention at the highest level in the defence as well as in the Government, we think it appropriate to direct the Secretary, Home Affairs, and the Secretary, Information & Broadcasting, Government of India and the Principal Secretary (Home), Government of U.P., to ensure that there is no reporting/ release of any news item by the Print as well as Electronic Media relating to the subject-matter, namely, the movement of troops as contained in the accompanying annexures..

Writ petition is dismissed at this stage with aforesaid directions.

Let a copy of this order issue today to the officials concerned as well as to learned Additional Solicitor General of India/Assistant Solicitor General of India and learned Chief Standing Counsel for immediate compliance.

From perusal of record of the contempt petition, it reveals that after passing of the order by the Writ Court, the applicant has not approached the authorities concerned, apparently, because Writ Court had directed for issuance of the copy of the order to the concerned officials, mentioned in the aforesaid order.

2. In Para 4 of the petition, it has been stated by the applicant that she heard through the Media Reports that Chairman of the Press Council of India termed the order of Writ Court as "not correct" and said that the Council will challenge the same before the Hon"ble Supreme Court. The applicant/ petitioner sent a caveat notice before the Hon"ble Supreme Court of India on 16.4.2012 and in its response, a copy of SLP No. 9411 of 2012, filed by the Press Council of India was sent to her. It has been further stated that Annexure P-5 of SLP consists of a letter dated 11.4.2012 sent by the Ministry of Information and Broadcasting, Government of India to the Contemner No. 2, Ms. Vibha Bhargava, Secretary, Press Council of India, New Delhi. In the said letter, it has been mentioned that Please refer to our telephonic discussions regarding directions issued by the Lucknow Bench of Allahabad High Court on 10th April, 2012, in respect of reporting by the print and electronic media about the movement of troops in the

country. A copy of the said order is enclosed. In order to implement the directions of High Court the Ministry requested Press Council of India to consider initiating appropriate action. We would also appreciate if the action taken in this regard is kindly intimated to us."

3. The submission of the applicant is that in pursuance of the aforesaid letter sent by the Ministry of Information and Broadcasting, Government of India to Ms. Vibha Bhargava, Secretary, Press Council of India, New Delhi, the Press Council of India was supposed to comply with the order of this Court immediately but instead of complying the orders, the Chairman of the Press Council of India passed order dated 12.4.2012. In the said order, among many other things, it was written that " With great respect to the High Court, I am of the opinion that the order of the High Court is not correct." It also said " The Press Council of India will be challenging the order of the Allahabad High Court in the Supreme Court of India very shortly." It is further submitted that the applicant on obtaining a copy of the SLP No. 9411 of 2012, came to know that the observation made by opposite party No. 4 with regard to order of the writ Court as "not correct", was not in his individual capacity while making an independent assessment of a legal decision as a legal expert but this was being done in his official capacity as the Chairman of the Press Council of India, whereas Ministry of Information and Broadcasting directed for execution of Hon"ble High Court's order.

4. It is also stated that Ministry of Information & Broadcasting and Press Council of India have to implement the order of this Court and if they are aggrieved by the said order, they had every right to seek a legal remedy by filing a SLP or by taking any other appropriate legal measure. It is prima facie obvious that as an implementing authority, in compliance of the order of this Court dated 10.4.2012, the Ministry of Information and Broadcasting, the Press Council of India and the Chairman of Press Council of India did not have a legal authority to sit upon the order of this Court and comment upon by terming it "not correct" and by deciding for themselves that they would not comply with the order of this Court.

5. Further submission is that the only appropriate legal measure available to the Ministry of Information and Broadcasting, Government of India and the Press Council of India was to comply with the order of this Court dated 10.4.2012, but instead of doing so, the opposite parties No. 4 and 5 tried to put themselves in the role of the Judge looking into merit of the order passed by writ Court. In this background, the submission of the applicant is that the act of the Ministry of Information and Broadcasting, Press Council of India, the opposite party No. 4 as its Chairman and the opposite party No. 5 as its Secretary is nothing short of contempt of this Court, where they did not implement the order of this Court through a self drawn assessment of the correctness of the decision and where they declared the decision to be "not correct" and decided that it would not be implemented.

6. It has been contended by the applicant that mere filing of SLP before Hon'ble Supreme Court, challenging the order of this Court, does not abrogate and relieve the contemnors from their act of contempt. Terming an order of this Court as "not correct" and not implementing it on the basis of one's own assessment and decision, are two entirely different things.

7. It is also submitted that the applicant does not have the exact information regarding compliance made by the Ministry of Home Affairs, Government of India and Department of Home, Government of Uttar Pradesh to whom this Court had also issued directions on 10.4.2012, but possibly they have also not complied the order. The applicant feels that it would be imperative to ascertain this fact from the Secretary, Ministry of Home Affairs, Government of India and Principal Secretary, Department of Home, Government of Uttar Pradesh and if the order has not been complied with at their levels as well, then to launch contempt proceedings against these two respondents as well. The applicant also submits that the cause of action started on and after 12.4.2012, when the Chairman, Press Council of India became the self appointed evaluator of the correctness of the decision of this Court and declaring the same as "not correct" and decided not to implement the same.

8. In this background, the applicant has prayed for initiating contempt proceedings against the respondents as per law and to nail them u/s 12 of the Contempt of Courts Act, 1971 for the willful disobedience of the order of this Court dated 10.4.2012, passed in W.P. No. 2685 of 2012 (PIL-Civil) after summoning them in person.

9. In the Supplementary Affidavit, it has been stated that what it required was an immediate compliance of the order of this Court, which would have been possible only by issuing certain appropriate directions to Print as well as Electronic Media directing them that there must be no reporting/ release of any news item by the Print as well as Electronic Media relating to the subject-matter, namely, the movement of troops as contained in the accompanying annexures in the writ petition. But, this was not ensured by the opposite parties. The fact remains that the Ministry of Information and Broadcasting vide letter dated 11.4.2012 directed the Press Council of India to ensure compliance of the order of this Court and to intimate it of the action so taken.

10. The Supplementary Affidavit further states that from perusal of the order dated 12.4.2012, it is evident that Press Council did not find it appropriate to ensure compliance of the order of this Court dated 10.4.2012 and willfully and deliberately ignored the compliance and termed the order as "not correct" and did not issue suitable directives. Since the Media never got any suitable direction/ order from the respondents, hence, it remained free to publish whatever it felt like, in complete transgression of this Court's order dated 10.4.2012.

11. In an attempt to show as to how the order was flagrantly violated, the

applicant has annexed copies of four articles published in various newspapers like "The Times of India", "The Indian Express", "The Tribune" and "The Sunday Indian" alongwith Supplementary Counter-affidavit. The applicant also expressed her belief that there would be many more such news items published by different Media on different other dates and, thus, despite orders of this Court that there would be no reporting about the Army Movement, even prominent newspapers were openly violating this Court's order simply because probably they had no directions issued on that behalf, as the Ministry of Information and Broadcasting passed over its responsibility to the Press Council of India and the Press Council suo moto decided that the order was not correct and it need not be complied with. What was hugely bewildering was that after having sent the letter dated 11.4.2012, the Ministry of Information and Broadcasting and the other two respondents did nothing to get this order implemented, resulting in this order getting openly violated.

12. It is also stated by the applicant that the complicity of the respondents gets doubly verified from the fact that even when such news articles actually got published after the order of this Court, the respondents took no steps/actions in this regard, which resulted in flagrant violation of this Court's order. Hence, these acts of the respondents fall in the category of "civil contempt".

13. I have considered the submissions of the applicant appearing in person and gone through the record.

The record of writ petition shows that Public Interest Litigation (PIL) was filed against the Union of India through Principal Secretary, Prime Minister's Office, New Delhi and the said PIL was dismissed with the directions to the Secretary, Home Affairs and Secretary Information & Broadcasting, Government of India and the Principal Secretary, (Home), Government of U.P. to ensure that there is no reporting/ release of any news item by the Print as well as Electronic Media relating to subject-matter, namely, the movement of troops as contained in the accompanying annexures of the Writ Petition.

14. The applicant earlier filed Contempt Petition (Civil) No. 1097 of 2012 which was dismissed as not pressed with liberty to file afresh as the applicant had not arrayed the authorities as parties to whom directions were issued by the writ Court.

15. On perusal of the present contempt petition, it reveals that the applicant has nowhere alleged/ averred that after passing of the order dated 10.4.2012 by the Writ Court, any news item was published/released ever in any of the Print as well as Electronic Media on the subject-matter, namely, movement of troops and when the applicant failed to demonstrate as to how the order of the Writ Court has been violated by the opposite parties, the applicant prayed for and granted "24 hours" time to enable her to prepare the case.

16. Today, i.e. 23.5.2012, the applicant filed a supplementary affidavit annexing therewith four news items published on 26/27.4.2012 in the newspapers namely,

The Times of India", "Indian Express", "The Tribune" and "Sunday India". The perusal of said news items reveal that the same refers to the statement given by Defence Minister in Rajya Sabha regarding the movements of Army Units in the night of January 16/17, 2012 only and the said report does not contain any report regarding fresh movements of Army Units after passing of the order dated 10.4.2012 of the Writ Court. It appears that all these reports have been filed by the applicant just in order to satisfy the query, which was put to her on 22.5.2012, as to how order of the Writ Court has been violated by the opposite parties. This Court has no hesitation in observing that the applicant by annexing newspapers' report, containing the statement of Defence Minister in the Rajya Sabha, has made an unsuccessful attempt to mislead this Court.

17. The sum and substance of the submissions of the applicant is that in compliance of the directions of the writ Court no directives have been issued to Print/ Electronics Media regarding non- reporting / release of news items on the subject-matter namely, "the movement of troops" and the Chairman of the Press Council of India termed the order of writ Court as "not correct."

18 On examining the order of Writ Court, this Court finds that directions were issued only to the Secretary, Home Affairs and the Secretary, Information & Broadcasting, Government of India and to the Principal Secretary, (Home), Government of U.P. to ensure that there is no reporting/ release of any news item by the Print as well as Electronic Media relating to subject-matter, namely, the movement of troops as contained in the accompanying annexures of the writ petition. The applicant has brought nothing on record, which shows any such reporting either by Print or Electronic Media after passing of order dated 10.4.2012 by the Writ Court, hence, this Court comes to the conclusion that allegation of the applicant to that effect are misconceived, unfounded and self imagination.

19 Now, before coming to the observation of the Chairman, Press Council of India on the order of Writ Court, this Court feels it appropriate to examine the judicial pronouncements on the issue of fair criticism of the judicial act and judgments. The right of speech and expression has always been considered as the most cherished right of every human being. In a civilized society, the Courts have exhibited high degree of tolerance and accepted adverse comments and criticism of their order/judgments even though, at times, such criticism is totally off the mark and the language used is inappropriate. The right of a member of the public to criticize the functioning of a judicial institution has been beautifully described by the Privy Council in *Ambard v. Attorney General for Trinidad and Tobago*, 1936 AC 322 : AIR 1936 PC 14, in following words:

.... no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice,

and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

20 In *R. v. Commr. Of Police of the Metropolis, ex p Blackburn* (No. 2), (1968) 2 QB 150 : (1968) 2 WLR 1204, Lord Denning observed:

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a Court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.

21. In *Aswini Kumar Ghose and Another Vs. Arabinda Bose and Another*, , the Apex Court observed that the Supreme Court is never oversensitive to public criticism; but when there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity. 23. In *Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra*, , a Bench of three Judges after referring to the leading cases on the subject held that:

(1) "The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.

(2) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

(3) A distinction must be made between a mere libel or defamation of a judge

and what amounts to a contempt of the Court. The test in each case would be whether the impugned publication is a more defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his Court. It is only in the latter case that it will be punishable as Contempt. Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public... the publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

23. In *P.N. Dua Vs. P. Shiv Shanker and Others*, , it has been held that administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office i.e. to defend and uphold the Constitution and the laws without fear and favour. Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective approach of the Judges and brings administration of justice to ridicule must be prevented. The contempt of Court proceedings arise out of that attempt. Judgments can be criticized, motives to the Judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or Judges should be welcome so long as such criticism does not impair or hamper the administration of justice. In a democracy Judges and Courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no Court would treat criticism as a contempt of Court.

24. Reiterating the earlier stand, three Judges Bench of the Apex Court in the case of *In Re: Roshan Lal Ahuja*, , observed that Judgments of the Court are open to criticism. Judges and Courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, outspoken, but made without any malice or attempting to impair the administration of justice and made in good faith in proper language don't attract any punishment for contempt of Court.

25. Freedom of criticism was again scrutinised by the Apex Court in the case of *Dr. D.C. Saxena, Contemnor Vs. Hon'ble the Chief Justice of India*, , and it observed as under:

Law is not in any doubt that in a free democracy every body is entitled to express his honest opinion about the correctness or legality of a judgment or sentence or an order of a Court but he should not overstep the bounds. Though

he is entitled to express that criticism objectively and with detachment in a dignified language and respectful tone with moderation, the liberty of expression should not be a licence to violently make personal attack on a judge. Subject to that, an honest criticism of the administration of justice is welcome since justice is not a cloistered virtue and is entitled to respectful scrutiny. Any citizen is entitled to express his honest opinion about the language pointing out the error or defect or illegality in the judgment, order of sentence. That is after the event as postmortem.

26. In the case of *In Re: Arundhati Roy*, , the Court held, fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the Courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the Courts in the name of fair criticism which, if not checked, would destroy the institution itself. Litigant losing in the Court would be the first to impute motives to the Judges and the institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic set-up i.e. judiciary.

27. In a recent decision rendered in *Indirect Tax Practitioners Association Vs. R.K. Jain*, , the Hon. Supreme Court went on to say as under :

In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, The freedom of speech and expression and freedom to speak one's mind have always been respected. After Independence, the Courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill-motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons.

Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power.

28. This Court after analyzing the aforesaid pronouncements comes to the conclusion that the judgments of Courts are public documents and can be

commented upon, analyzed and criticized, but it has to be in fair and healthy manner without attributing motives. Before placing before public, whether on print or electronic media, all concerned have to see whether any such criticism has crossed the limits as aforesaid and if it has, then resist every temptation to make it public.

29. As for as submission of the applicant that in compliance of the directions of the Writ Court no directions have been issued to the Print/ Electronic Media regarding non-reporting/ release of the news item on the subject-matter by the Press Council of India is concerned, this Court finds that firstly, the Press Council of India was not a party in the writ petition, secondly, no directions were issued by the Writ Court to the Press Council of India and, thirdly the applicant cannot take any advantage of the internal correspondence made between the Ministry of Information & Broadcasting, Government of India and the Press Council of India, which she came to know through copy of SLP filed by the Press Council of India before the Hon''ble Supreme Court for pressing the contempt proceedings against the functionaries of the Press Council of India.

30. Further, Press Council of India is a statutory body and apart from performing the functions u/s 13 of the Press Council Act, 1978 also performs the quasi judicial functions and examines the complaints in respect of newspapers, news agency, editor or other working journalist u/s 14(1) of the Act, as per the provisions prescribed in the Press Council (Procedure For Inquiry) Regulations, 1979. The insistence of the applicant that the act of Press Council of India of not issuing any directions in pursuance to the request of the Ministry of Information and Broadcasting for compliance of the directions of Writ Court falls within the definition of Civil Contempt, is misconceived, as it was Secretary, Home Affairs, the Secretary, Information & Broadcasting, Government of India and the Principal Secretary, (Home), Government of U.P. were required to ensure that there is no reporting/ release of any news items by the Print as well as Electronic Media relating to the subject-matter, namely, the movement of troops and the fact remains that no reporting was done by either of the two after the directions of the Writ Court. In this background, no case for willful disobedience of the order of Writ Court on the part of functionaries of the Press Council of India is made out.

31. Now, coming to the observation of the Chairman, Press Council of India on the order of Writ Court, this Court finds that the Chairman, Press Council of India after giving reasons, expressed his opinion with great respect to High Court. This Court is of the considered view that observation of terming the order of the Writ Court as "not correct" is just an opinion of the Chairman of Press Council of India, who has every right of fair and healthy criticism of the judgment.

32. The order of Writ Court has also been challenged by the Press Council of India before the Hon''ble Apex Court by means of SLP No. 9411 of 2012, which is pending consideration before the Hon''ble Supreme Court of India.

At this stage, it would also be appropriate to mention herein that Section 5 of the Contempt of Courts Act, 1971 provides that a person shall not be guilty of contempt for publishing any fair comment on the merits of any case which has been finally decided.

33. Further, from the perusal of record, this Court comes to the conclusion that the applicant has made an unsuccessful attempt to make out the case, out of nothing, but just for the sake of sensationalism whereas the applicant failed to bring on record any news item published/ released in any of the Print as well as Electronic Media on the subject-matter i.e. Movement of Troops, after passing of the order dated 10.4.2012 by the Writ Court.

Thus, petition lacks bona fides and is an abuse of the process of the Court. It appears that the petitioner has filed this petition just to come in limelight and nothing else, which wasted time of the Court. The time of Court is precious for the reason that it is public's time and must be utilised for adjudicating the matters which have substance and need to be decided at the earliest. If the time of the Court is consumed, that too, a lion's share, by frivolous and bogus litigations which is bound to take away the time which could have been utilised for needy litigants. In the result, the petition is dismissed. The applicant/petitioner is saddled with costs of Rupees One Lakh (Rs. 1,00,000/-) for filing a frivolous petition. The cost shall be deposited by the applicant/petitioner within a month from today before the Registrar of the Court. The Registry shall transmit Rs. 50,000/- to the Mediation and Conciliation Center of this Court and the remaining amount of Rs. 50,000/- will go to the Library of Oudh Bar Association for purchase of Books. If the cost is not deposited by the applicant within the aforesaid period, the Registrar of this Court will proceed to get the same recovered as arrears of land revenue from the applicant/petitioner.