
(2013) 04 PAT CK 0037

In the Patna High Court

Case No : Misc. Jurisdiction Case No. 4913 of 2010

Dr. Paras Nath Sahay

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 2 PLJR 658

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

Bench : Single Bench

Advocate : Abhimanyu Sharma, for the Appellant; D.K. Sinha, for the Respondent

Judgement

J.N. Singh, J.—It is high time functionaries of the Government, and of all the instrumentalities of the State, should be clear that in cases where an order/direction is issued by this Court upon them, they have the following three course only open to them:--

(i) They have to comply the order/direction within the time limit fixed therein for the purpose; or

(ii) If they have doubts about correctness of the order/direction, they should take steps promptly to file an appeal against the same in accordance with law and in any case before the time limit for its compliance laid down by the Court expires; or

(iii) If they find apparent error, on the face of the record, in the order/direction, they may file review petition (in the same Court) within the time limit prescribed in law for the same and in accordance with law, and in any case within the time fixed by the Court for compliance of its order/direction.

In matters where they do not find it necessary to adopt the second or third course, but at the same time, they find the compliance of the order, within the time limit laid down in the order, not possible, due to reasons beyond their

control and without any laches on their part, they are required to file an application before the same very Court, and within the very time limit fixed in the order for compliance, for extension of time. If none of these steps is taken, and the time limit for compliance of the order expires, disobedience of order of the Court is complete and lack of bona fide on the part of the concerned functionary, in not complying with the order of the Court, is writ large on the face of it and violation of rule of law stands done by him. Filing of contempt application by a party is only to bring the disobedience and defiance of the Court's order by the concerned functionary of the State, to the knowledge of the Court.

2. Malady is further compounded because of the frequent transfers and postings of the officials, absolving them of the responsibility of performance and of producing results. They join their new assignments, but they do not bother to find out the pending Court matters in their new office, till they receive urgent calls/communications from the State Counsel about contempt proceedings already drawn, requiring their personal appearance. They do not take precautions of being immediately informed by their office about any information or communication received from the State Counsel in normal course about any pending Court matter.

3. In the present case, writ application was allowed by this Court on 7.7.2010. This Court quashed the entire proceeding and the impugned order of termination of service of the petitioner. Authorities were further directed to treat him reinstated in service with effect from the date of order of his termination and to treat him to have superannuated with effect from the due date. This Court further directed for review of his service records and grant consequential revision of pay scale and increments, becoming admissible to him from time to time, till his date of superannuation with payment of monetary benefits thereof. They were also directed to release the admissible dues of salary and retrial benefits of the petitioner under all heads within a period of four months from the date of receipt/production of a copy of the order.

4. After the order, petitioner submitted his joining on 12.7.2010 and thereafter filed representations also on 29.7.2010 and 11.10.2010. Four months time granted by this Court expired on 7.11.2010, but the State authorities did not comply the order. Hence, petitioner filed this contempt application on 29.11.2010.

5. Matter was taken up by this Court on 9.2.2011, when four weeks time was allowed to the opposite parties to file show cause. Matter was again taken up on 20.4.2011 when further four weeks time was allowed. On 14.7.2011 a show cause was filed on behalf of opposite party no. 5, sworn by the Director-in-Chief, Health Services, stating that a review application being Civil Review No. 176 of 2011 has been filed by the opposite parties for review of the order passed in the writ matter on 7.7.2010 which was pending, but without any averment in respect of compliance of the orders of this Court. Four months time had expired on 7.11.2010. Apparently, the civil review application was filed much after the said

time had expired. Civil review application was finally heard and dismissed by this Court on 14.12.2011. Till then opposite parties had not filed any show cause showing compliance of the orders dated 7.7.2010. Hence, by order dated 28.3.2012, contempt proceeding was initiated in the matter against the Director-in-Chief, Department of Health, Medical Education and Family Welfare, Govt. of Bihar and four weeks time was granted to show cause as to why he may not be punished for disobedience of the orders of this Court and for showing his non-cooperation in the matter.

6. A supplementary show cause was filed on 16.5.2012 on behalf of the Director-in-Chief, seeking three months time for compliance of the order of this Court. A further show cause was filed on 4.7.2012 seeking two months more time for compliance of the order of this Court. This Court was not satisfied with the grounds taken in both the show causes for seeking time. Hence, by order dated 4.7.2012, this Court held the Director-in-Chief, Health Services guilty of contempt of this Court and adjourned the matter for 1.8.2012 for hearing on the question of punishment.

7. The Director-in-Chief, Health Services filed M.A. No. 492 of 2012 against the said order dated 4.7.2012 by which this Court had held the Director-in-Chief guilty of contempt. It appears that the said M.A. was taken up by a Division Bench of this Court and the same was dismissed by order dated 5.9.2012. This was informed by learned Additional Advocate General No. 2 on the next date in this matter. Thereafter, a series of supplementary show cause were filed on behalf of the Director-in-Chief informing this Court that the order of this Court dated 7.7.2010 has now been fully complied. An interlocutory application bearing I.A. No. 6006 of 2012 was also filed by the Director-in-Chief for recall of order dated 4.7.2012 holding him guilty of contempt and for his discharge. Thereafter, learned counsel for the petitioner accepted that the order of this Court dated 7.7.2010 has now been complied with by the opposite parties finally.

8. Facts of the case show that the order of this Court dated 7.7.2010, which was required to be complied by 7.11.2010, was finally complied by the opposite parties after more than two years. Apparently, by 7.11.2010 no step had been taken by them either to get the order set aside in appeal or get it reviewed or get the time extended. It was only after the petitioner filed contempt application that the opposite parties took notice of the order and then decided to file review. This was clearly an attempt to buy time without any effort to comply with the order or get it reversed. After the review application was dismissed on 14.12.2011, again they did not take steps for compliance of the order for more than three months. Hence, a proceeding of contempt was initiated against the Director-in-Chief on 28.3.2012. Almost two months after its initiation, a supplementary show cause was filed on 16.5.2012 seeking three months time for compliance. Another supplementary show cause was filed on 4.7.2012, i.e. almost two months after the earlier supplementary show cause, praying for further two months time. These supplementary show causes were considered by

this Court and it found that there were only lame excuses made in them. Hence, the same were rejected and the Director-in-Chief was held guilty of contempt, vide order dated 4.7.2012, and matter was adjourned for 1.8.2012 for hearing on the question of punishment. It appears that, instead of taking substantial steps, in between this period, to comply with the orders of this Court, an appeal was filed on behalf of the Director-in-Chief, which was dismissed by the Division Bench on 3.8.2012. Ultimately, it was only, after dismissal of the appeal that the Director-in-Chief took serious steps for compliance of the orders of this Court and complied with the same.

9. The entire course of events and action of the Director-in-Chief in connection with this case shows that at the initial stage orders of this Court were totally ignored. Thereafter, there was a clear attempt to delay the matter as much as possible and ultimately there was an attempt to scuttle the matter by taking it to the Division Bench. During the entire period, there was no bona fide and serious attempt on the part of the opposite parties and in particular Director-in-Chief to comply with the orders of this Court. Nothing has been brought on record to show that any appeal was filed and was pending against the order of this Court dated 7.7.2010 passed in the writ matter, challenging the same on merits, before a Division Bench at any point of time. Review was also filed almost two months after the time limit expired and after filing of the contempt application. Thus, lack of bona fide on the part of the opposite parties and, in particular, on the part of the Director-in-Chief is manifest from the records. A clear deliberate disobedience of the orders of this Court by them is writ large from the records. The Director-in-Chief was benefited in his attempt due to delay in taking up the matter by this Court because of overburdened docket of this Court, indulgences shown by this Court and his machinations.

10. This Court must make it clear that a proceeding of contempt should be taken seriously and must not be allowed to be treated by the opposite parties as an execution proceeding by this Court. After disobedience is brought to the notice of this Court through a contempt application, or otherwise, any subsequent step in the proceeding is essentially either to bring the guilty to book or to allow him to purge of the contempt with unqualified apology, accepted at times in given circumstances. Allowing time to the guilty to purge himself of contempt should not be allowed to be used to linger the proceeding for months and years. It should not be allowed to become a ploy in the hands of the contemnors to continue in contempt indefinitely. Quick, effective and precise justice to the deserving and putting an end to the injustice firmly and finally with quick punishment to the guilty, if necessary, is the golden thread underlying the doctrine of rule of law. If all required materials and information are available on record, the Court or the authorities are not supposed to leave the matter or issue undecided with uncertainty and ambiguity, allowing the lis to drag on and go round and round for years. Duties and responsibilities assigned by the Constitution and laws on judicial, quasi judicial or administrative authorities, empowered to decide rights and obligations do not permit that. A mechanical

order by an authority, without proper application of mind to the facts and materials available on record and the law applicable in the matter, and in complete ignorance of the earlier orders/judgments of this Court or the Apex Court in identical/similar cases (if brought to his notice), passed merely to escape contempt is no compliance and in fact may amount to an attempt to deceive this Court and play fraud with it.

11. However, in the present case admittedly, order dated 7.7.2010 has been complied with in letter and spirit, though more than two years later. But this Court has found lack of bona fide on the part of the contemnors and particularly, the Director-in-Chief, throughout, resulting in abnormal delay in the matter. Hence, I.A. No. 6006 of 2012 for recalling the order dated 4.7.2012 is rejected.

12. Since Director-in-Chief has already been held guilty of contempt, this Court imposes a fine of Rs. 1000/- (Rupees One Thousand) upon him to be paid to the petitioner from his own pocket within two months from the date of production of a copy of this order. This Court further directs the Chief Secretary to hold an enquiry and fix responsibility for delay in compliance of the orders of this Court and further directs him to order that the entire cost of the proceeding, incurred on behalf of the opposite parties in filing pleadings or for appearance of the learned State Counsel, be realized from the person found responsible, after compliance with Principles of Natural Justice. Since petitioner had to file contempt application in this Court for compliance of the orders of this Court dated 7.7.2010 and had to pursue the matter in this Court for more than two years, waiting full compliance of the orders, this Court awards a cost of Rs. 10,000/- (Rupees Ten Thousand), to be paid to the petitioner by the person found responsible by the Chief Secretary. The Chief Secretary shall see to it that this order is complied with in its letter and spirit on all the three counts positively within two months from the date of receipt/production of a copy of this order.

13. Contempt application is accordingly disposed of. Let a copy of this order be sent to the Chief Secretary, Government of Bihar for his knowledge and needful.