

(1996) 09 OHC CK 0025
In the Orissa High Court
Case No : Misc. Case No. 4952 of 1985

Dr. Pratap Chandra Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (1996) 2 OLR 519

Hon'ble Judges : R.K. Patra, J; R.K. Dash, J

Bench : Division Bench

Judgement

1. Consequent upon surrender of P. G. (Medical) seats of the central quota by the Central Government to the State Government, a number of writ petitions (which have been disposed of today) were filed in this Court by different candidates praying for a direction to the State Government and its officials to make those seats available to them on the basis of their merit position after holding counselling. On. 3-5-1996 when some of the writ petitions came up for consideration, this Court (vide order No. 6 dated 3-5-1996 in OJC No. 3580 of 1995) observed that writ petitions filed for the self-same relief after 2-5-1996 will not be entertained. On 17-8-1996 (vide order No. 4 dated 17-5-1996 in OJC No. 776 of 1996) we directed the election Committee to hold counselling of the concerned petitioners and submit the result thereof on the next date of hearing (25-6-1996). It was made? clear by that order that the counselling would be without prejudice to the rights and contentions of the opposite parties. On that day, the learned Additional Government Advocate submitted that it was immediately not possible to hold counselling because Selection Committee-was busy in finalising the admission to State quota seats for the session 1996-97. Accordingly, counselling was re-scheduled to be held on 10-6-1996. When the writ petitions were listed on 25-6-1996 for final disposal, the learned Additional Government Advocate stated that no counselling was held on the scheduled date of 10-6-1996 and this application was filed to modify the order dated 17-5-1996 passed in OJC No. 776 of 1996 by which counselling was directed to be held. As

no counselling was held on the scheduled date, this Court was of the prima facie view that the Director, Medical Education and Training (hereinafter referred to as "the D. M. E. T. ") and the Governor, P. G. Selection Committee, 1995 who were to conduct the counselling committed contempt of Court and they were called upon to appear in person and show cause as to why they would not be suitably dealt with for having violated the Court's order dated 17-5-1996. Pursuant to the said direction, the D. M. E. T. and the Governor appear in person on 26-6-1996. The learned Advocate General stated in Court that the action (or inaction ?) of the concerned officers in not holding the counselling on scheduled date is "unpardonable" and assured that counselling would be held on 1-7-1996. Accordingly the counselling was held on 1-7-1993.

2. The D. M. E. T. and the Governor filed their respective show cause reply on 2-7-1996. On 3-7-1996, learned counsel for the petitioners brought to our notice a copy of the letter No. 20232 dated 8-6-1996 written by the Under-Secretary of the Health and Family Welfare Department to the D. M. E. T. directing to cancel the counselling scheduled to be held on 10-6-1996.. As the said direction contained in the letter was contrary to and in violation of the Court's order, we called upon the Secretary of the Department and the Under Secretary to appear in person and file their show cause replies. Both of them appeared in person and filed their show cause replies.

3. It is an admitted fact that counselling was directed to be held on 10-6-1996 and the same was not done on the scheduled date. It was done on 1-7-1996 only when further order was passed on 26-6-1996 in the matter as aforesaid. In the circumstances, it is, therefore, necessary to examine, if the aforesaid four officers have deliberately violated this Court's order thereby committed contempt of this Court.

4. For the sake of convenience, we would first take up the cases of the Secretary and the Under-Secretary of the department.

(i) Shri P. K. Hota was the Secretary to the Government in the Health and Family Welfare Department at the relevant time. He has filed his show cause reply which was buttressed by the affidavit dated 15-7-1996 filed by the Under-Secretary of the Department. On reading of the cause of the Secretary and the affidavit of the Under-Secretary, it transpires that on 8-6-1996 which was a holiday (being a second Saturday) the D. M. E. T. placed a letter before him indicating certain reasons for which it was "impossible" to conduct the counselling on 10-6-1996. The Governor, however, on 31-5-1996 had fixed the date for second counselling to 10-6-1996 pursuant to the Court's order. Looking at the reasons given by the D. M. E. T. and as there was little time because of the intervening holidays to get the advice from the Advocate-General, the Secretary directed to seek clarification from the Court bringing to its notice the difficulties/reasons pointed out by the D. M. E. T. The Secretary in his affidavit has stated that he never directed the D. M. E. T. to cancel the counselling. The Under-Secretary in his affidavit dated 16-7-1996 has averred that the Secretary of the Department had not received

any direction from the Court nor was he required to do anything with the counselling. The Under-secretary has further mentioned that "it is now reported that the Director while cancelling the counselling fixed to 10-8-1995 has not taken any steps . either to refix the date before 25th June, 1996 or to move the Hon"ble High Court for further clarification. These matters were also not brought to the notice of the Secretary at any time".

Shri G. Rath, learned senior counsel appearing for the Secretary and the Under-Secretary, relying on the decisions on the Supreme Court in *S. S Ray v. State of Orissa* ILR 1960 SC 190 and *Ashok Kumar Singh and others Vs. State of Bihar and others*, submitted that there was no wilful culpability on their part and since the Secretary was given to understand by the D. M. E. T. that the Court was being moved for seeking necessary clarification, he merely passed an order to postpone the holding of the counselling. The learned counsel has also brought to our notice the notings vide Annexure-A/1 made by the Secretary in the concerned file on 21-12-1935 to the effect that non-utilisation of 14 seats in a situation where the department is running short of qualified personnel is a very serious matter and the D. M. E. T. should have anticipated such contingencies and prepared policy back up accordingly. The Secretary directed the D. M. E. T. to discuss the matter with him to "retrieve" the situation.

In *S. S. Ray's* case (supra), a First Class Magistrate passed an order u/s 144, Cr PC restraining the Civil Court peon from executing a warrant of arrest issued by the Additional Munsif in connection with the execution of a money decree. This Court held the said Magistrate guilty of contempt of Court by recording a finding that he acted in negligent manner and without proper care and attention. When the matter went in appeal, the Supreme Court observed that although the Magistrate acted without proper care and caution, in absence of anything on record to suggest wilful culpability on his part and the order being not influenced by any extraneous consideration or dishonest motive, the Magistrate cannot be held guilty of contempt of Court.

In the case of *Ashok Kumar Singh* (supra), the Supreme Court dropped the contempt proceeding against the contemnors in absence of any material that they wilfully, deliberately or contemptuously flouted or disobeyed the Court's order. The Court observed that it was a case of mis-interpretation of the executive direction and the order of the Court.

Keeping in view the ratio of the aforesaid two cases, if the matter is considered, it would appear that the Secretary as well as the Under-Secretary of the Department were not required to do anything with regard to the counselling scheduled to be held on 10-6-1996. Although the Secretary instructed the D. M. E. T. to move the Court immediately for clarification, the D. M. E. T. did not take any step for filing any application before 10-6-1996. He even had not brought the matters to the notice of the Secretary at any time. The Undersecretary in his affidavit has averred that the counter-affidavit filed by the D. M. E. T. raising "various controversial questions of law" was without the knowledge or approval

of the Secretary. After going through the relevant file produced before us and on perusal of the show cause replies and the affidavit of the Under-Secretary, we do not find sufficient material to hold that the Secretary deliberately and/or wilfully violated the Court's order. The D. M. E. T. did not bring to the notice of the Secretary that the counselling scheduled to be held on 10-6-1996 was without prejudice to the rights and contentions of the opposite parties. In the circumstances, the Secretary in his anxiety instructed the D. M. E. T. that if it was not possible to hold the counselling on 10-6-1996, the Court should be moved immediately for further clarification. But the D. M. E. T. did not do anything at all till 25-6-1996 when he filed an application for modification of the order dated 17-5-1996.

So far as the Under-Secretary of the department is concerned, he has merely issued letter No. 20232 dated 8-8-1996 pursuant to the order of the Secretary in the matter. In the said letter, he in fact instructed the D. M. E. T. to file a modification petition before the Court immediately, obviously prior to the scheduled date of counselling. We do not find anything to suggest that the Under-Secretary did anything deliberately or contrary to the order of this Court. For the aforesaid reasons, we are inclined to accept the cause submitted by the Secretary and the Under-Secretary of the Department and discharge the rule issued against them. We order accordingly.

(ii) Let us now consider the cause shown by the D. M. E. T. in the matter. He has admitted in his affidavit that counselling was scheduled to be held on 10-6-1996 but it was not held till the Court passed orders on 26-6-1996 directing him to hold the counselling on 1-7-1996. On a thorough and careful perusal of the show cause reply filed by him, it would appear that he failed to take note of the observation of the Court in the order dated 17-5-1996 wherein it was made clear that "the counselling would be without prejudice to the rights and contentions of the opposite parties. It, therefore, follows that if counselling would have been held on 10-6-1996 it would not have prejudiced anyone inasmuch as it was subject to the final decision in the writ petitions. Despite such protection given to the opposite parties, the D. M. E. T. has furnished principally the following reasons for not holding the counselling on 10-6-1996:

- (a) Counselling is against the norms prescribed by the Medical Council of India ;
- (b) There is bar to such counselling in para-13.1 of the prospectus and holding of the counselling is against the mandate of the Supreme Court ; and
- (c) Some of the writ petitioners are in-service candidates who wanted that available seats after surrender may be proportionately divided against them and the direct candidates.

All the reasons taken by the D. M. E. T. for not holding the counselling was matters of arguments and in fact the learned Additional Government Advocate urged them at the time of hearing which has been dealt with in the main judgment. Heaven would not have fallen if he had held the counselling on the

date fixed.

In the preceding paragraphs, we have found how on 8-6-1996 which was a holiday, the D. M.E.T. placed a letter before the Secretary indicating the so-called difficulties to hold the counselling on 10-6-1996. He did not bring to the notice of the Secretary the order of the Court that counselling would be without prejudice to the rights and contentions of the opposite parties. Had he brought this fact to the notice of the Secretary, we are sure, the Secretary even would not have directed him to move the Court for further clarification. The D. M. E. T. seems to have kept the Secretary in dark with regard to the whole matter. We have noticed that the Under-Secretary in his affidavit dated 15-7-1996 has even gone to the extent of saying that the D. M. E. T. filed counter-affidavit raising various controversial questions of law without the knowledge or approval of the Secretary of the Department. That the D. IV. E. T. was trying to over-reach the Court is evident from his show cause reply and the further affidavit filed by him on 2-7-1996. In the latter affidavit he has argued that the second counselling and the result thereof is against the statute and the mandate of the Supreme Court and no admission can be given pursuant to the second counselling for different reasons. From the letter dated 8-6-1996 (Annexure-B/1), it would appear that the D. M. E. T. pleaded before the Secretary that "it is impossible at this stage to conduct the counselling for the admission 1995-96, taking into consideration the entire merit list of the candidates from among whom the candidates have been admitted and have already completed one year of 3 year P. G. course. On perusal of all the aforesaid letters and the show cause reply, we are of the considered opinion that the D. M. E. T. arrogated to himself the power of the Court and decided that counselling should not be held on the scheduled date without bothering to take note of the observation of the Court that the counselling would be without prejudice to his rights and contentions. We are convinced that the D. M. E. T. was determined to thwart the Court's order deliberately and with some motive. By his act and conduct he was clearly attempting to interfere with the administration of justice which cannot be lightly viewed. No doubt, he has offered unconditional apology. We are not persuaded to accept the same. As the apex Court in T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others, has observed, "it is equally necessary to erase an impression which appears to be gaining ground that the "mantra" of unconditional apology is a complete answer to violations and infractions of the orders of the Court.

For the aforesaid reasons, we reject his apology and hold that , Dr. K. K. Mishra, D. M. E. T. Orissa, has committed contempt of this Court and find him guilty u/s 12 of the Contempt of Courts Act, 1971 and sentence him to pay a fine of Rs. 500/-, (Five hundred), in default to undergo simple imprisonment for 10 days. The fine to be paid by him will not be borne out of the State Exchequer.

(iii) The Convenor, P. G. Selection Committee is Dr. A. K. Sarangi. We have perused tire "cause" submitted by him. Except that he was the Convenor, he had

no role to play in cancelling the counselling scheduled to be held on 10-6-1996. We accept his cause and discharge the rule issued against him.

5. The Misc. Case is accordingly disposed of.