
(2015) 08 AP CK 0029
In the Andhra Pradesh High Court
Case No : C.C. No. 1039 of 2015

G. Koteswara Rao

APPELLANT

Vs

E. Murali and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340
General Clauses Act, 1897 — Section 2(b), 27
Penal Code, 1860 (IPC) — Section 120-B, 167, 191, 193

Citation : (2015) 6 ALD 730 : (2015) 6 ALT 397

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Papaiah, for the Appellant

Judgement

C.V. Nagarjuna Reddy, J.

1. This Contempt Case is filed by the petitioner in W.P. No. 28875 of 2014 alleging wilful disobedience of order dated in 10-10-2014.

2. The facts leading to the institution of this Contempt Case, briefly narrated, are as follows:

"The petitioner is the permanent fair price shop dealer of shop No. 54 of Janapadu village, Piduguralla Mandal, Guntur District. He was one of the victims of indiscriminate suspension of fair price shop authorisations unleashed by respondent No. 1 on jejune grounds. When the suspension orders dated 22-8-2014 were assailed by the affected dealers, including the petitioner, this Court by common order dated 10-10-2014 set aside the same as the suspensions were based on imputations which were not only generic but also ex facie trivial and frivolous. This Court has also observed that the separate orders of suspension passed against the four dealers replicate with each other in every syllable without any variation except to the extent that respondent No. 1 has jumbled up the imputations from one place to the other by changing their serial

numbers and has accordingly invalidated the orders of suspension of authorisations of the petitioners therein, including that of the petitioner herein and allowed the Writ Petitions."

3. The grievance, nay, the complaint of the petitioner in this Contempt Case is that having resumed the supplies to his shop in the month of November 2014 in pursuance of the order dated 10-10-2014 in W.P. No. 28875 of 2014, the respondents have abruptly stopped the supplies from March 2015. The petitioner pleaded that on 6-4-2015, he has made a representation to respondent No. 1 informing him that though he has been obtaining Demand Drafts (D.Ds.) and challans in time and distributing the commodities to the cardholders properly, respondent No. 2 has not given him challan for the month of March 2015. The petitioner has accordingly requested respondent No. 1 to allow him to obtain challan for the month of April 2015 as his authorisation is valid till March 2016. As the supplies were not resumed to the petitioner even for the month of April 2015, he has filed the present Contempt Case.

4. On 19-6-2015, the Contempt Case came up for admission. At the request of the learned Assistant Government Pleader for Civil Supplies (AP), the case was adjourned to 26-6-2016 for filing counter-affidavit. Counter-affidavit, sworn to on 23-6-2015, was accordingly filed by respondent No. 2 on 24-6-2015. Upon perusal of the contents of the counter-affidavit, this Court felt that the same are incredulous and it has accordingly admitted the Contempt Case on 26-6-2015. On 23-7-2015, respondent No. 1 has also filed a counter-affidavit. Thereafter, both the respondents have appeared before this Court on 24-7-2015. On the same day, the case was heard and orders were reserved.

5. In the counter-affidavit filed by respondent No. 2, he has inter alia stated that the petitioner did not remit Demand Draft till 7-3-2015 though allotment was made in his favour for the month of March 2015; that he has issued notice vide Rc. No. 1/2015/A, dated 7-3-2015 requesting the petitioner to remit Demand Draft, but he refused to receive the same; that he has issued another notice dated 11-3-2015 again requesting him to remit Demand Draft on 11-3-2015 which was the last date for such remittance; that as the petitioner refused to receive the said notice also, the same was affixed on the petitioners residence; and that his subsequent enquiries revealed that the petitioner is staying away from the village from April 2015 and his whereabouts are not known. While asserting that he has not violated the order of this Court, respondent No. 2 offered unconditional apology in form, but a conditional one in substance, stating that if this Court comes to the conclusion that there is any violation, he is offering unconditional apology.

6. The counter-affidavit of respondent No. 1 is in tune with that of respondent No. 2. He has also blamed the petitioner for their non-supply of commodities showing non-remittance of Demand Drafts as the cause for such non-supply. Respondent No. 1 has sworn to the two notices dated 7-3-2015 and 11-3-2015 allegedly issued by respondent No. 2 to the petitioner in his counter-affidavit. He

has further averred that the petitioner remitted the amount through challan dated 24-6-2015 and lifted the stocks for the month of June 2015. He has however not denied the petitioners averment that the latter has given him representation dated 6-4-2015. Respondent No. 1 has also tendered apology in the same manner as done by respondent No. 2.

7. The gravamen of the allegation against the respondents is that having resumed supply of essential commodities to the petitioners fair price shop in November 2014 in pursuance of the final order in W.P. No. 28875 of 2014, they have deliberately and wilfully stopped the supplies from the month of March 2015. The only defence of the respondents as reflected from their respective counter-affidavits is that the petitioner, on his own failed to remit the D.Ds. from the month of March 2015, compelling respondent No. 2 to make alternative arrangements by allotting essential commodities to the neighbouring fair price shop No. 32, Brahmanapalli village, Piduguralla Mandal.

8. Having regard to the respective pleadings of the parties, the Points arising for consideration are:

"(1) Whether the respondents have discontinued the supply of essential commodities to the petitioners fair price shop due to the letters own default in furnishing D.Ds. towards the value of the commodities from the month of March 2015? and

(2) Whether the respondents are guilty of contempt of Court and commission of any other offences? and

(3) To what action?"

Re Point Nos. 1 & 2:

9. In support of his plea that respondent No. 2 has discontinued supplies to his shop from the month of March 2015, in spite of his readiness to distribute the commodities, the petitioner has filed a copy of the representation in vernacular language (Telugu) made to respondent No. 1 on 6-4-2015. The petitioner has clearly stated therein that he has been functioning as dealer for the last 36 years; that there never were complaints against him; that he was always taking Demand Drafts in time; and that despite there being no complaints against him, respondent No. 2 has not given him challan for the month of March 2015. He has therefore requested respondent No. 1 through the said representation to allow him to distribute supplies from April month onwards. In his counter-affidavit, respondent No. 1 has not denied receipt of this representation. Respondent No. 1 has not explained as to what steps he has taken for resuming the supplies to the petitioners fair price shop on receipt of the said representation. Instead, he has supported the version of respondent No. 2 that the petitioner on his own failed to furnish D.Ds. for allotment of essential commodities from the month of March 2015 and that the two notices sent by respondent No. 2 were refused by the petitioner.

10. The learned Government Pleader produced the record of respondent No. 2, a perusal of which shows that pagination is not maintained. The documents are not arranged in sequence. Therefore, it is not at all difficult for respondent No. 2 to prepare the two alleged notices by ante-dating and placing them on file. This is precisely what respondent No. 2 appears to have done. This conclusion of mine derives support from the following reasons.

11. In order to lend support to his stand, respondent No. 2 has filed a statement containing allotment of essential commodities for the month of March 2015, a perusal of which shows that in respect of shop No. 54 of Janapadu village, allotment was made in the name of the petitioner. He has also filed copies of the purported notices dated 7-3-2015 and 11-3-2015 calling upon the petitioner to produce Demand Draft and lift the essential commodities for the month of March 2015.

12. As regards the statement of allotment, there is nothing to doubt its correctness. However, mere preparation of statement showing the allotment of essential commodities in the name of the petitioner would not enable him to lift the essential commodities unless he is informed about the quantum of the amount payable through challan to enable him to obtain D.Ds. and get the commodities released. The learned Counsel for the petitioner strongly denied respondent No. 2 issuing any notices as averred in his counter-affidavit and submitted that they are created for the purpose of overcoming the charge of contempt. In this context, it is relevant to refer to Clause 5(1)(B) of the A.P. State Public Distribution System (Control) Order 2008, which reads as under :

"(i) In case of any fair price shop dealer/nominated retailer fails to remit the value of the allotted scheduled commodities on or before the date fixed, a penal fee of Rs. 500/- (Rupees five hundred only) per day shall be levied for each such occasion.

(ii)

(iii) If the fair price shop dealer/nominated dealer repeats the same lapse consecutively for 3 months, his/her authorization shall be liable for suspension and cancellation."

From the above reproduced Clause, it is evident that if a fair price shop dealer fails to remit the value of the allotted scheduled commodities on or before the date fixed, a penal fee of Rs. 500/- per day shall be levied for each such occasion, and if he repeats the same lapse consecutively for three months, his authorisation shall be liable for suspension and cancellation. As per the version of the respondents, the petitioner has failed to remit the D.Ds. for four consecutive months, namely, March, April, May and June 2015. Therefore, the respondents were left with no option other than levying penal fee on the petitioner for his alleged failure in remitting D.Ds. for three consecutive months and suspending/cancelling his authorisation on the expiry of three months. If the petitioner has on his own volition stopped furnishing D.Ds., the respondents would have

initiated appropriate action against him under the above reproduced Clause.

13. The falsity of the version of respondent No. 2 that he has issued two notices on 7-3-2015 and 11-3-2015 requesting the petitioner to furnish Demand Draft is thoroughly exposed by the fact that he has failed to file proof of receipt of these notices by the petitioner. As regards notice dated 7-3-2015, respondent No. 2 has stated in his counter-affidavit that the petitioner refused to receive the said notice. He has not explained as to the mode of sending this notice to the petitioner. A copy of the purported notice filed along with the counter-affidavit also does not throw light in this regard. A similar stand is taken by respondent No. 2 with regard to notice dated 11-3-2015. When the petitioner allegedly refused to receive the two notices, respondent No. 2 is expected to send the notice through registered post, which is the recognised mode of service of notices, for raising a presumption under Section 27 of the General Clauses Act, 1897. For reasons best known to him, he had not followed this procedure.

14. At the hearing, the learned Government Pleader for Civil Supplies has submitted that these notices were sought to be tendered to the petitioner through the Village Revenue Officer (VRO) and that the petitioner and his family members refused to receive these notices. No endorsement was made by the VRO on the notice dated 7-3-2015 to the effect that the petitioner has refused to receive the said notice. However, the endorsement on notice dated 11-3-2015, in Telugu, purportedly made by the VRO of Janapadu village, on its true translation, reads as under:

"Submitted,

Since Sri G. Koteswar Rao, fair price shop dealer of shop No. 54, Janapadu and his family members have refused to receive this notice, the same is affixed on the door of their house."

15. Two persons by names K. Mastan and M. Ramu are shown to have signed the said notice.

16. Admittedly, respondent No. 1 is not only the appointing authority but is also vested with the disciplinary powers of suspension and cancellation of authorisations. He is also vested with the power to make alternative arrangements for distribution of essential commodities wherever the authorisations are either suspended or cancelled. Concededly, respondent No. 2 does not have any independent power to take decisions on his own in a situation as the present one where the fair price shop dealer has allegedly failed to discharge his functions. Therefore, if the petitioner has failed to lift the commodities, respondent No. 2 being the subordinate to respondent No. 1 is bound to report the said fact to respondent No. 1. It is not the pleaded case of the respondents that respondent No. 2 has, at any point of time, sent a report to respondent No. 1 about the alleged gross dereliction of duty by the petitioner. While it is exclusively within the powers of respondent No. 1 to initiate action against the petitioner and also to make alternative arrangements for distribution

of commodities, instead of informing him about the alleged gross misconduct of the petitioner and requesting him for taking such measures, respondent No. 2 made allotment in the name of the petitioner on paper, but allowed the neighbouring fair price shop dealer to distribute the commodities. Such action, without suspending the petitioners authorisation, is wholly illegal, for, so long as the petitioners authorisation remains in force, the essential commodities cannot be allotted to any other dealer or a third party. No explanation is forthcoming from respondent No. 2 as to why he has not reported the matter to respondent No. 1 and requested him to immediately suspend the petitioners authorisation. While the alleged act of the petitioner in not furnishing D.Ds. from the month of March 2015 itself constituted serious misconduct, his alleged refusal to receive notice from respondent No. 2 constitutes gross indiscipline warranting immediate suspension of his authorisation. If the petitioner is really guilty of both these acts of misconduct, it is wholly inconceivable that respondent No. 2 has not reported the same to respondent No. 1 and the latter has not suspended the petitioners authorisation. The respondents have failed to offer any explanation in this regard.

17. As noted hereinbefore, when respondent No. 2 has discontinued supply of essential commodities to the petitioners fair price shop, he has promptly made a representation on 6-4-2015 to respondent No. 1, which fact is not disputed by the latter. The fact of the petitioner making a representation to respondent No. 1, falsifies the entire version put forth by the respondents in their defence, namely, that the petitioner, on his own, has stopped furnishing D.Ds. from the month of March 2015. The conduct attributed to the petitioner militates against the conduct of any person of an ordinary prudence. That the respondents have come out with a blatantly false version is evident from the following admitted facts:

"(a) That the petitioner has been the dealer for the last 36 years and is not shown to have history of failure to lift the stocks in the past.

(b) That the petitioner promptly questioned the patently illegal action of respondent No. 1 in suspending his authorisation and succeeded in doing so.

(c) That following his success in W.P. No. 28875 of 2014, the petitioner punctually remitted the Demand Draft for November 2014, resumed and continued distribution till February 2015.

(d) That when respondent No. 2 abruptly stopped supplies, the petitioner made a representation on 6-4-2015 to respondent No. 1 complaining against respondent No. 2 and requested him to resume supplies.

(e) That when supplies for the months of April and May 2015 were not resumed, he has filed the present Contempt Case on 15-6-2015."

In the light of the above undisputed facts, it is impossible to believe that the petitioner would abruptly and without any reason develop disinterestedness in the dealership and stop furnishing D.Ds. Equally, the conduct of the respondents in not initiating disciplinary action against the petitioner for his alleged failure to

distribute essential commodities from the month of March 2015 and for the alleged act of refusal of notices allegedly sent by respondent No. 2, is unusual and strange. No person in place of respondent No. 2 would have failed to report the alleged misconduct of the petitioner to the disciplinary authority and no disciplinary authority in place of respondent No. 1 would have failed to take action against a dealer who is allegedly guilty of gross dereliction of his duties. Except the ipse dixit of the respondents, no material worth acceptance is produced by them to come to the conclusion that the petitioner on his own stopped furnishing D.Ds. from the month of March 2015 and was staying away from the village from April 2015. If his staying away from the village from April 2015 was true, there was no reason for the petitioner for not lifting the stocks in March 2015.

18. It is of interest to note that the Contempt Case was presented in the Registry on 16-6-2015 and papers were served on the office of the Government Pleader on 17-6-2015. The Case was listed for admission on 19-6-2015 and on that day it was adjourned at the request of the learned Government Pleader for filing counter affidavit. Curiously, allotment of essential commodities was made in favour of the petitioners fair price shop on 20-6-2015 for the month of July 2015 and following the same, the petitioner has paid the value for the essential commodities and distributed the same. Respondent No. 2 who has stopped making allotment from March 2015, suddenly resumed the allotment a day after the Contempt Case was adjourned at the request of the Government Pleader. Similarly, the petitioner who allegedly stopped furnishing D.Ds. from the March 2015 received the allotment order and challan and paid the value of the commodities and resumed distribution.

19. From the above undisputed facts, it is evident that the respondents, who felt impelled to resume the supplies following this Courts order dated 10-10-2014 in W.P. No. 28875 of 2014 from the month of November 2014, abruptly stopped supplying the essential commodities to the petitioners shop from the month of March 2015 without any reason. Until they were not aware of the filing of the Contempt Case, the respondents have not bothered about the petitioners request to permit him to function as the dealer. The moment they came to know about the filing of the Contempt Case, they immediately made allotment to the petitioners fair price shop for the month of July 2015. In order to cover up their devious and abhorrent conduct, the respondents have come out with a patently false version that the petitioner has on his own stopped furnishing D.Ds. for lifting the essential commodities. With a view to ensure that their stand passes muster of this Court and to escape their liability under the provisions of the Contempt of Courts Act, 1971 (for short the Act), respondent No. 2 has gone to the extent of bringing into existence the two notices dated 7-3-2015 and 11-3-2015, which were never served on the petitioner. The aforementioned uncontroverted facts would clearly reveal without any cavil of doubt that the respondents have consciously and out of ill-motive discontinued the supply of essential commodities to the petitioners fair price shop with a view to over-reach

the order of this Court in W.P. No. 28875 of 2014. These acts of the respondents not only constitute wilful violation of the order of this Court, but also attract the offence of perjury under Section 191 of the Indian Penal Code, 1860 (IPC) punishable under Section 193 thereof, as they tried to hoodwink this Court by coming out with a blatantly false version.

20. Creation of false documents by public servants is a heinous crime which warrants stringent action, so that it would not only be punitive, but also preventive. Therefore, respondent No. 2 is liable for prosecution under Section 167 IPC. Though respondent No. 1 has not created these documents, he has not only sworn by these documents, but also extended his all-out support to respondent No. 2 clearly suggesting his complicity in the commission of the offences by respondent No. 2. I am therefore of the opinion that the respondents are guilty of contempt of court under Section 2(b) of the Act for their wilful and deliberate violation of order dated 10-10-2014 in W.P. No. 28875 of 2014, and are also liable to be prosecuted under Sections 167, 191 and 193 IPC r/w. Section 120-B IPC.

Re Point No. 3:

21. The next aspect that needs to be considered is the nature of punishment to be imposed on the respondents. It is a matter of grave concern that there is alarming rise in the tendency of the Government Officers to circumvent judicial orders. The instant case is a paradigm of this tendency. Unless the conduct exhibited by the respondents is dealt with heavy hand, wrong signals will be sent to the society.

22. The learned Government Pleader for Civil Supplies has requested for taking a lenient view. As held hereinbefore, the respondents have not only flouted the order of this Court deliberately and malafide, they have also indulged in heinous act of fabricating documents, to cover up their act of brazen violation of this Courts order.

23. In E.T. Sunup Vs. C.A.N.S.S. Employees Association and Another, AIR 2005 SC 115 : (2005) CriLJ 131 : (2005) 1 ESC 77 : (2004) 9 JT 277 : (2005) 1 LLJ 243 : (2004) 8 SCALE 706 : (2004) 8 SCC 683 : (2005) 2 SLJ 33 , the Supreme Court has taken judicial notice of the tendency of Government Officers to somehow or the other circumvent the orders of the Court and try to take recourse to one justification or the other. Rejecting the plea of mercy, the Court observed:

"But if the Courts orders are flouted like this, then people will lose faith in the Courts. Therefore, it is necessary to deal with such type of violation of Courts order with strong hands and to convey to the authorities that the courts are not going to take things lightly."

24. Dealing with acceptance of apologies, in L.D. Jaikwal Vs. State of U.P., AIR 1984 SC 1374 : (1984) CriLJ 993 : (1984) 1 SCALE 862 : (1984) 3 SCC 405 :

(1984) 3 SCR 833 : (1984) 16 UJ 942 , the Apex Court held that it cannot subscribe to slap - say sorry - and forget school of thought in administration of contempt jurisprudence.

25. In T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, AIR 2006 SC 2007 : (2006) 102 CLT 791 : (2006) CriLJ 2773 : (2006) 5 JT 492 : (2006) 5 SCALE 361 : (2006) 5 SCC 1 : (2006) 2 SCR 215 Supp : (2006) AIRSCW 2475 : (2006) 4 Supreme 185 the Supreme Court, while finding a Minister and highly placed forest officers guilty of deliberately flouting its orders, held:

"That apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness."

26. On the facts of the present case, I have no qualm of conscience to decline the request of the learned Government Pleader to take a lenient view.

27. Considering the gravity of violation, imposition of sentence of imprisonment for four weeks in civil prison and fine of Rs. 2,000/- (Rupees two thousand only) each, and in default of payment of fine, imprisonment for one week, on the respondents, meets the ends of justice. Ordered accordingly. The subsistence allowance is fixed at Rs. 400/- (Rupees four hundred only) per day, to each of the respondents, to be borne by the petitioner under Rule 32(3) of the Contempt of Court Rules, 1980.

28. The Registrar (Judicial) is directed to take necessary steps for execution of this Judgment under Rules 31 and 33 of the said Rules. He is further directed to initiate prosecution against the respondents for the offences under Sections 167, 191 and 193 IPC r/w. Section 120-B IPC, by following the procedure under Section 340 of the Code of Criminal Procedure, 1973.

29. After the Judgment is pronounced, the learned Government Pleader for Civil Supplies (AP) requested for suspension of the operation of the Judgment for a reasonable period to enable the respondents to avail the remedy of appeal. In view of this request, the Judgment is suspended for a period of three weeks.