

(1998) 11 GAU CK 0006

In the Gauhati High Court

Case No : Civil Original Petition (Contempt) No. 32 of 1997

Government Pensioners" Association

APPELLANT

Vs

Sashi Prakash and Another

RESPONDENT

Date of Decision : 04-11-1998

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (1999) CriLJ 3118 : (1999) 2 GLT 393

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; B.R. Bhattacharjee and S. Das, for the Respondent

Judgement

A.K. Patnaik, J.—This is an application under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971 for initiating contempt proceedings against the respondents for wilful disobedience of the judgment and order dated 22-4-97 passed by the learned single Judge of this Court in Civil Rule No. 259/95.

2. In Civil Rule No. 259/95 filed by the petitioner-Association on behalf of the State Government pensioners, the petitioner had prayed for a writ of mandamus on the State-respondents to pay Dearness Relief at the rate applicable to Central Government Pensioners and by judgment and order dated 22-4-97, the learned single Judge allowed the writ petition and directed the respondents to pay the State Government pensioners Dearness Relief at the rate applicable to the Central Government pensioners. In the said judgment and order, the learned single Judge also found that as on 1-4-95, the State Government paid Dearness Relief up to 83% whereas the Central Government paid Dearness Relief up to 125% as on 1-1-95 and there was a clear gap of 42% between the rate of Dearness Relief that had been paid by the State Government and the rate of Dearness Relief that had been paid by the Central Government and directed the respondents to pay the 20% of the unpaid Dearness Relief by 22-6-97 and the

balance 22% of the Dearness Relief by 22-8-97.

3. At the hearing of this contempt petition, Mr. D.K. Biswas, learned Counsel appearing for the petitioner-Association, submitted that by the aforesaid judgment and order, the learned single Judge clearly directed the respondents to pay the State Government pensioners Dearness Relief at the rate applicable to the Central Government pensioners. Hence, the respondents were not only required to pay the aforesaid dearness relief of 42% which became due owing to gap between the rate as paid by the State Government as on 1-4-95 and the rate as paid by the Central Government as on 1-1-95, but also were required to pay to the State Government pensioners dearness relief at the rate applicable to the Central Government pensioners from time to time as and when announced by the Central Government after 1-1-95. Mr. Biswas further stated that though the aforesaid gap of 42% in the dearness relief between the rate as paid by the State Government as on 1 -1 -95 has now been taken care of, and the instalments as fixed by the Court in the aforesaid judgment, and order for payment of the aforesaid gap of 42% have been paid to the State Govt. pensioners, after 1-1-95 the Central Government has paid further dearness relief to its pensioners but the State Govt. of Tripura has not paid the said dearness relief to its pensioners. He explained that the object of dearness relief is to neutralize the rise in prices of essential commodities and the cost of living, but this object has been frustrated by the respondents by withholding the dearness relief on one ground or the other. According to Mr. Biswas, therefore, there was wilful disobedience of the direction of the learned single Judge in the aforesaid judgment and order dated 22-4-97 to the respondents to pay the State Government pensioners dearness relief at the rate applicable to the Central Government pensioners.

4. Mr. B.R. Bhattacharjee, learned Counsel appearing for the respondents, on the other hand, submitted that by the said judgment and order of the learned single Judge in Civil Rule No. 259/95 time limits were fixed only for payment of the two instalments towards the dues of dearness relief of 42% which was found to be the gap between the rate of dearness relief as paid by the State Government as on 1-4-95 and the rate of dearness relief as paid by the Central Government as on 1 -1 -95. But by the said judgment no time limit was fixed for payment of dearness relief at the rate applicable to the Central Government pensioners after 1-1-95. He further submitted that as to when the State Government would pay dearness relief at the rate applicable to the Central Government pensioners after 1-1-95 is for the State Government to decide depending upon the financial resources available with the State Government. In this context, he stated that the present financial position of the State Government is extremely bad as the financial year 1997-98 has ended with the closing balance of (-) 10.31 crore and the said closing balance of the State Government at the end of August/98 further deteriorated to (-) 25 crore. He further stated that for meeting its various liabilities, the State Government had to borrow Rs. 217.41 crores during 1998-99 as compared to Rs. 123.71 crore during the previous year 1997-98. He

submitted that besides meeting the requirements of development work which is necessary for the poor people of the State of Tripura, the State Government has to implement the Pay Commission Report which has an annual financial liability of Rs. 200 crore. He explained that it is for these reasons that the State Govt. has not been able to pay to its pensioners dearness relief at the rate applicable to the Central Government pensioners from time to time after 1-1-95. According to Mr. Bhattacharjee, therefore, there has been no wilful disobedience of the directions in the judgment and order dated 22-4-97 in the aforesaid Civil Rule No. 259/95.

5. On a query being made by the Court as to when the State Government would be able to pay its pensioners dearness relief at the rates applicable to the Central Government pensioners for the period after 1-1-95, Mr. Bhattacharjee stated that the financial predicament of the State Government is such that it is not in a position to stipulate the time limit within which such payment can be made to its pensioners. He further submitted that by the judgment and order dated 22-4-97 of the learned single Judge in Civil Rule No. 259/95, no such time limit was fixed and the Court in this contempt proceeding cannot pass an order fixing any time limit for such payment unless it comes to the conclusion that the respondents are guilty of civil contempt because such an order would amount to review of the judgment and order in the said Civil Rule.

6. In Civil Rule No. 257/95, the petitioner-Association had prayed for a writ of mandamus directing the State respondents to pay dearness relief applicable to the Central Government pensioners. This would be evident from para-1 of the judgment and order dated 22-4-97 in the said Civil Rule and in paragraph 26 of the said judgment, the learned single Judge of this Court granted the said relief. The relevant portion of paragraph 26 of the judgment is quoted hereinbelow:--

...The petition is allowed and accordingly respondents are directed to pay its pensioners dearness relief at the rate applicable to the Central Government pensioners.

In paragraphs 28 and 29 of the judgment, the learned single Judge has considered the question of payment of dues to the pensioners as per the relief as granted by the Court and has finally directed in paragraph 28 as follows:

...Therefore, I consider it appropriate that the dues should be paid within a reasonable time and accordingly I order and direct the respondents to pay 20% of the un-paid dearness relief out of 42% latest by 22nd June, 1997 minus the amount, if any, is paid towards dearness relief during pendency of the writ petition and the balance of 22% of the dearness relief by 22nd August, 1997. Keeping in view of the hardship which the pensioners are passing through at this old age I hope that the Government of Tripura shall not cause delay in clearing up the dues within the time limit I have mentioned above.

It is thus clear that this Court in the said judgment expressly directed the respondents to pay the State Government pensioners dearness relief at the rate

applicable to the Central Government pensioners, and so far as the dues of the pensioners towards the dearness relief at the rate applicable to the Central Government pensioners as on 1-1-95 was concerned, this Court granted reasonable time to pay up the unpaid dearness relief of 42% in two instalments, one instalment of 30% by 22-6-97 and another instalment of 22% by 22-8-97. Thus, it is not as if the direction of the Court in the said judgment and order to the State Government was to pay its pensioners only the 42% gap in the dearness relief that was found by the Court not to have been paid by the State Government. There was an express direction by the Court to the respondents to pay the State Government pensioners dearness relief at the rate applicable to the Central Government pensioners. It is, however, true as submitted by Mr. Bhattacharjee, learned Counsel for the respondents, that no time has been fixed by the Court within which the respondents were to pay the State Government pensioners dearness relief at the rates applicable to the Central Government pensioners as and when such relief was announced by the Central Government after 1-1-95. But when no time limit is fixed by a judgment and order of a Court for complying with the direction given by the Court, the respondents have to comply with the direction within a reasonable time and cannot go on avoiding compliance with the direction of the Court for an unreasonable period of time. What would be the reasonable time within which the authorities have to comply with the direction of the Court however, will depend upon the facts and circumstances of each case.

7. In the present case, it appears from the counter-affidavit filed by the respondents-1 and 2 as well as the submissions made by Mr. Bhattacharjee that the respondents were under an, erroneous impression that they were only required by the judgment and order dated 22-4-97 to pay the dues towards the unpaid dearness relief of 42% which was found to be the gap between the State Government rates and the Central Government rates as on 1-4-95/1-1-95 and that by the said judgment and order they were not required to pay dearness relief at the rates applicable to the Central Government pensioners as and when announced by the Central Government after 1-1 -95 and that the State Government had the liberty to pay dearness relief to its pensioners at the rates applicable to the Central Government pensioners as and when it decided depending upon its resources, etc. What the respondents have lost sight of is that by the judgment and order dated 22-4-97, a clear direction was given by the Court to the respondents to pay the State Government pensioners dearness relief at the rates applicable to the Central Government pensioners and that such payment was to be made within a reasonable time from the dates when the rates applicable to the Central Government pensioners were announced by the Central Government. Once this Court directed the respondents by the said judgment and order dated 22-4-97 to pay dearness relief to the pensioners at the rates applicable to the Central Government pensioners, and the said judgment and order attained finality, the respondents were under a legal obligation to pay the same to the pensioners unless the relevant rules were amended in the

meanwhile. The respondents appeared to have entertained the misconception that the payment of dearness relief was to be made to the State Government pensioners at the rates applicable to the Central Government pensioners after 1-1-95 at the discretion of the State Government as and when the State Government decided depending upon its resources even though there was no amendment to the rules.

8. Non-implementation of the direction of this Court in the aforesaid judgment and order dated 22-4-97 in Civil Rule No. 259/95 to pay the pensioners of the State Government dearness relief at the rates applicable to the Central Government pensioners after 1-1-95 is therefore not wilful but due to mistaken interpretation of the said judgment and order of this Court and due to financial constraints faced by the State Government. In the cases of Makar Dhwaaj Pal and Others Vs. Neera Yadav (Smt) and Another, and Kashinath Kher and Others Vs. Dinesh Kumar Bhagat and Others, the Supreme Court, after having found that the non-implementation of the orders of the Court was not deliberate, granted further time to the contemnors to implement the Court's order. Considering the financial difficulties faced by the State Government and at the same time the hardship of the pensioners due to the exorbitant rise in prices, while dropping the contempt proceeding, I allow six months' time from today to the respondents to comply with the direction in the aforesaid judgment and order to pay the State Government pensioners dearness relief at the rates applicable to the Central Government pensioners as granted after 1-1-95.