
(1977) 08 GUJ CK 0002
In the Gujarat High Court

Hasmukhlal C. Shah and Others

APPELLANT

Vs

State Of Gujarat and Another

RESPONDENT

Date of Decision : 30-08-1977

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(B), 2(b)

Citation : (1978) 19 GLR 378

Hon'ble Judges : P.D. Desai, J;J.B. Mehta, J

Bench : Division Bench

Judgement

P.D. Desai, J.—On February 13, 1976 a Division Bench of this Court made the following peremptory order while allowing Letters Patent Appeal No. 276 of 1974:

In the result, the appeal is allowed. The respondents are directed to pay up all the petitioners the arrears of their aforesaid special pay within three months from the date of this order. Rule is made absolute with costs all throughout.

The Writ communicating the aforesaid directive was admittedly served on the State Government (one of the respondents to the Letters Patent Appeal) on or about March 8, 1976. The certified copy of the judgment of this Court was admittedly made available to the State Government on or about May 13, 1976.

2. According to the order made by this Court, the arrears of special pay were required to be paid to the petitioners on or before May 12, 1976. Since payment was not made accordingly, the petitioners addressed a letter dated July 22, 1976 to the second respondent herein (Secretary to the Government, Revenue Department) through their advocate drawing his attention to the noncompliance with the order of the Court and Specifying tentatively the amount due to each petitioner and requesting him to move the State Government to issue necessary orders at an early date. The letter was admittedly received but it was not even acknowledged. A reminder was thereafter sent by the petitioners through their advocates on November 11, 1976 and it again met with the same fate. The petitioners then addressed another letter through their advocates on February 9,

1977 to the second respondent (annexing thereto a copy of the earlier letter dated July 22, 1976) and requesting him to direct payment of arrears within a week of the receipt of the letter and advising him that in case no action was taken, they would be compelled to institute contempt proceedings in this Court for the disobedience of its orders. To this communication an undated and unsigned reply was received by the advocates of the petitioners advising that "Government have already issued the orders for payment of arrears etc. arising out of the decision of the High Court in Special Civil Application No. 207 of 1970" and that "the arrears being large, it is likely to take time to work out the exact amount payable to your clients." The letter proceeded to state that the Accountant General Rajkot and the concerned officers were being requested to make the payment at the earliest.

3. Even thereafter nothing further happened and the petitioners hereupon filed this Contempt Petition on August 19, 1977 praying that there being wilful disregard of the order of this Court, the respondent should be committed for contempt. Rule was issued on the petition on August 22 1977 and the second respondent was directed to remain present in the Court on August 26, 1977 the returnable date.

4 On August 26, 1977 the second respondent was present in the court. The learned Government Pleader appeared on behalf of the respondent and tendered an affidavit dated August 25, 1977 sworn by the second respondent.

5. The affidavit at the outset and in the conclusion tenders an intonational and unqualified apology for the delay occasioned in implementation, the writ of this Court and then proceeds to explain the causes of delay. To state briefly, the facts emerging from the affidavit are as follow: (1) Writ of this Court directing payment within the limited time was received on March 8, 1976 and certified copy of the judgment was received on May 13, 1976; (2) The Settlement Commissioner and Director of Land Records and the Government Solicitor advised the Government by their letters dated April 23, 1976 and May 25, 1976 respectively that the case was not a fit one for further appeal; (3) The Legal Department tendered similar advice on or about June 16, 1976; (4) On May 20, 1976 the Settlement Commissioner and Director of Land Records was requested to work out the amount of the special pay payable to the petitioners in accordance with the decision of this Court and further correspondence followed in the course of which the said officer ultimately informed the Government by his letter dated October 25, 1976 that actual figures were difficult to ascertain and that can only be worked out by the Additional Accountant General, Rajkot; (5) The papers were then submitted to Financial Adviser and on December 24, 1976 be directed that general authorization orders be issued regarding the payment; (6) The Government thereafter issued a Resolution on January 13, 1977 directing inter alia that special pay at Rs. 100/- per month should be continued in respect of the concerned officers and that the arrears be paid to them for the period they continued to hold the posts in the concerned cadres. The Resolution proceeded to

state that the Accountant General, Rajkot and the pay and Accounts Officer, Ahmedabad should authorize payment of arrears to those of the officers who had been allocated in the concerned cadres under their respective payment control during the time that they continued to hold the posts in the said cadres; (7) The petitioners were since issued authorizations letters by the Accountant General, Rajkot and they would be able to draw the amount to which they were entitled; (8) Long delay was caused because the exact amount payable to each petitioner was not ascertainable.

6. When the matter reached hearing on August 26, 1977 the petitioners complained that all of them had still not received the authorization slips from the Accountant General, Rajkot and that only some of them had received actual payment. The further complaint was that even in the case of those of the petitioners who had received the slips or payment, full amount due was not authorized to be paid or paid. The complaint, in other words, was that even on the date of hearing of the contempt application, the order of this Court was still not implemented. Under the circumstances, we adjourned the hearing till today to enable the government to do the needful in the matter meanwhile.

7. When the matter reached bearing today, both the learned Government Pleader and the learned advocate appearing on behalf of the petitioners stated to the Court that payments were duly made to all the petitioners in compliance with the decision of this Court and that there were only marginal differences which will be ironed out within a short time hereafter. The learned Government Pleader also stated to the Court that in the case of those of the petitioners who had already retired, revised orders with regard to payment of gratuity and pension would be passed by the competent authority within a period of three months from today.

8. The question, which arises in the context of these facts, is whether any action under the Contempt of Courts Act is required to be taken in the present case. For the purposes of civil contempt, u/s 2(b) of the Contempt of Courts Act what is required to be established is "wilful disobedience" to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. The question, in other words, is whether from the undisputed or proved facts, wilful disregard of the order of the Court can be held established.

9. The following facts are established from the material on record in the present case: (1) The peremptory order directing payment within three months was made on February 13, 1976 in the presence of the Government advocate; (2) Writ communicating the order was served on the Government on March 8, 1976 and certified copy of the judgment reached the Government on May 13, 1976; (3) The time limited by this Court for making payment expired on May 12, 1976; (4) No stay order was obtained from any higher Court nor extension of time was sought for from this Court at any point of time; (5) The first ever step in the direction of the implementation of the order was taken on May 20, 1976, that is to say, only after the expiry of the time limit set by this Court when the Settlement Commissioner and Director of Land Records was asked to furnish the

particulars of clears payable to the petitioners; (6) The Government was finally advised by the Legal Department on June 16, 1976 that this was not a fit case in which appeal was required to be filed and the Government must be taken to have acquiesced in the decision of this Court atleast as from and with effect from the said date; (7) The Settlement Commissioner and the Director of Land Records took a long time and after reminders were sent to him, he ultimately informed the Government on October 25, 1976 that he was not in a position to furnish the particulars; .(8) The Financial Adviser then cleared the proposal on December 24, 1976 directing that general authorizations orders be issued; (9) In the meantime the petitioners wrote two letters to the second respondent on July 22, 1976 and November 11, 1976 through their advocate. In the first letter, the petitioners furnished tentative figures of the arrears to which they had become entitled tinder the order of this Court. No reply was sent to either of these communications. They were not even acknowledged; (10) On January 13, 1977 the Government passed the resolution giving general authorization orders for payment. Even in this resolution there is no indication that the Government was anxious about the fact that a time limit was set up for making the payment and that time limit had expired long tune back; (11) On February 9, 1977 the petitioners sent yet another communication through their advocate to the second respondent and a reply was to the said communication sometime in the same month (we are informed that it was sent on February 22, 1977) and the petitioners were informed that the Government had already issued orders, but the amount of arrears being large, it was likely to take time to work out the exact amount payable to the petitioners. Be it noted that before this communication was issued the second respondent was already informed that the delay which was occurring in payment of these amounts to the petitioners amounted to contempt of Court and that this Court might have to be moved for adequate relief in case payment was not made within one week; (12) After this reply was sent on February 22, 1977 no steps appear to have been taken to carry out not only the Writ of this Court but also the assurance that was contained in the letter dated February 22, 1977 and no payment whatever was made to any of the petitioners; (13) The contempt petition was filed on August 19, 1977, Rule was issued on August 22, 1977 and even on the returnable date, only part payments were made to some of the petitioners, though not to all.

9.1 The decision on the question regarding wilful default makes relevant the state of mind of the contemner. There cannot, in the very nature of things, be any direct evidence of the state of mind in all cases. It is generally a matter of inference from proved facts and in cases where there is admitted default in carrying out the orders of the Court, one has only to consider whether such disregard is accidental or bona fide or whether it was intentional or it arose out of gross neglect or reckless disregard of the orders of the Court even after the pointed attention of the contemner was drawn to the same. It is true that a case of honest blundering or even carelessness may not lead to the conclusion of wilful disregard. However, an authority cannot be said to be acting honestly when

its attention is drawn to the fact that there is something wrong and it does not make further inquiry and acts in reckless disregard of consequences. Reckless disregard of consequences and mala fides stand equal, where the actual state of mind of the actor is relevant. *The Municipality of Bhiwandi and Nizampur Vs. Kailash Sizing Works*, . If, therefore, the attention of the contemnors has been drawn to the fact that time bound orders of the Court were not carried out and" that as a result thereof the contempt petitioner was denied the benefit of the just relief granted to him by the Court and still they do riot make further inquiry and even when they are warned of the consequences of contempt, they still persist in disregarding the order of the Court and in failing to implement it faithfully in reckless disregard of such consequences the conclusion as to wilful disregard can justly be drawn.

10. In the present case, on the facts stated above, it was easy for us to reach a conclusion on the question whether there is wilful disregard, disregard being an admitted and proved fact. There is enough material to reach adjust conclusion. We are, however, not entering into that field in view of the unconditional and unqualified apology tendered by the second respondent on behalf of the respondents and also in view of the fact that once the contempt petition was filed, he has taken all possible steps to implement the order of the Court with such expedition as was possible in the circumstances of the case. Our attention has also been drawn ,by the learned Government Pleader to certain departmental instructions which have since been issued by the Government in the Revenue Department with a view to ensuring that the decisions of this Court in various proceedings are faithfully implemented. This is one of the few cases which have come to us recently in which we do find unequivocally that there is a complete disregard of the order of this Court. The time limit appears to have been treated as if it did not exist at all. Still, however, we refrain from recording a positive finding of contempt and from taking any action against the contemnors only in view of the circumstances stated above and also in the true hope that cases like this will serve as an example for the competent authorities and that they will act up effective machinery for quick implementation of lawful orders passed in judicial proceedings, which every authority and particularly, the Government is bound to carry out faithfully and honestly.

11. Recently, in Miscellaneous Civil Application No. 319 of 1977 in Special Civil Application No. 1194 of 1976 which was decided by us on August 23, 1977, we have drawn the attention of the State Government to the unhappy state of affairs which prevails in the matter of implementation of the orders of this Court. We have there pointed out that the time limits are set up only in harsh cases which, in the opinion of the Court, require quick redress and that Writs of this Court must be implemented within the limited time unless stay order is obtained from the Appellate Court or time is extended upon an application duly made to this Court before its expiry. In cases where no time limit is set up, the Writs must be implemented as expeditiously as possible and within a reasonable time. A citizen comes to this Court after having failed to get justice at the hands of the

Government and even when he succeeds in this Court, usually after a prolonged battle, he should not be left with a feeling that he still does not get expeditious redress of his grievance. That apart, in Government which is ruled by laws there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the Courts of law under the Constitution might be rendered a futile exercise. It is hoped that we shall not have to deal with any such case hereafter.

12. In the result, we accept the unconditional and unqualified apology tendered by the second respondent in this case and discharge the rule. In the peculiar circumstances of the case, however, we direct the respondents to pay the costs of this petition to the petitioners.