

(1991) 06 CAL CK 0003
In the Calcutta High Court
Case No : C.R. No. 3134 of 1989

Hindusthan Lever Sramik Karmachari Congress	APPELLANT
Vs	
Ashish Chakraborty and Others	RESPONDENT

Date of Decision : 03-06-1991

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (1991) 2 CALLT 143 : (1991) CriLJ 2890

Hon'ble Judges : Khwaja Mohammad Yusuf, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Bhaskar Ghosh and B.K. Chatterjee, for the Appellant; N.N. Goptu, General and C.K. Saha, for the Contemnors Nos. 1 to 6, T.K. Banerjee, Dipak K. Ghosh and S.R. Saha for Contemnors Nos. 7 to 10 and P. R. Mondal, for Contemnors Nos. 11 and 12, for the Respondent

Judgement

Khwaja Mohammad Yusuf, J.—This is an application for contempt for wilful disobedience and deliberate violation of my order dated 21st July, 1989 passed in C.O. No. 1939 of 1989 by the alleged contemnors by not allowing the Special Officers to hold and conduct the election of the Executive Committee of the Hindusthan Lever Sramik Karmachari Congress as per programme drawn by the two Special Officers in accordance with the direction given to the learned Additional District Judge, 5th Court, Alipore, and also by interfering with the course of justice by intimidating and coercing and also assaulting the two Special Officers appointed as per my order to frustrate the election of the Union.

2. In my Judgment of 21st July, 1989, I, inter alia, directed the learned Additional District Judge, 5th Court, Alipore, to appoint two Special Officers to conduct the election of the Executive Committee of the Hindusthan Lever Sramik Karmachari Congress in accordance with the constitution of the said Trade Union within a period of two months from the date of their appointment. The learned Judge was given liberty to give-necessary direction to the Special Officers and to hold the election through secret ballot. I further directed that the Special Officers

would be at liberty to take suitable police help for holding and completing the election by declaring the result and the concerned police authorities of the area including the Deputy Commissioner of Police and the Officer-in-Charge of the Police Station were directed to render all possible police assistance to the Special Officers for the smooth conduct of the election. Liberty was also given to the Special Officers to seek direction from the learned Additional District Judge whenever they would so require. I further directed that till the election took place there would be status quo as of 21st July, 1989 with regard to the affairs of the Union vis-a-vis the petitioner. Mr. Asish Chakraborty moved the Supreme Court against my Judgment and the SLP (Civil) No. 10156 of 1989 was disallowed on 27th September, 1989.

3. In paragraph 27 of the Judgment I observed that the newly-elected Executive Committee did not appear to be functioning smoothly and if functioning at all for limited purposes, it was functioning with the active aid and assistance of Company (i.e. M/s. Hindusthan Lever Limited) and in paragraph 29, I made clear that "the best course would be to direct the Hindusthan Lever Sramik Karmachari Congress to hold the fresh election of the Executive Committee of the Union under the supervision of two Special Officers to be appointed by the learned Additional District Judge, 5th Court, Alipore, so that the wrangle among the two factions led by Tewary and Ashish must come to an end once for all and the Company must work smoothly and peacefully with the new Executive Committee in accordance with law [1989(2) Cri.L.J. 140 . 1989(2)cal. I.t. 283].

4. In the contempt application some allegations have been made against the Police Personnel and the faction of the Union led by Mr. Ashish Chakraborty. Pursuant to my Order the learned Additional District Judge appointed Mr. Uttam Basu and Mr. Pijush Kanti Nag, the two learned Advocates, as Special Officers to conduct the election of the Executive Committee of the Union. On 21st September, 1989 the Special Officers issued notice for election giving details regarding the Election Schedule and on 25th September, 1989 primary voters' list was published inviting objections within 48 hours. On 26th September, 1989 Mr. Ashish Chakraborty filed a petition praying for certain direction upon the Special Officers and the learned Additional District Judge passed necessary order thereon. The said Mr. Chakraborty, the alleged contemnor No. 1, moved a writ application before Shymal Kumar Sen, J. on 19th October, 1989. As the election date was fixed by the Special Officers on 28th October, 1989 His Lordship was pleased to direct that the election would be held as scheduled but the result would not be declared till 15th November, 1989. On the voting date i.e. 28th October, 1989 hundred of voters were waiting in queue in front of the punching gate of the factory of M/s. Hindusthan Lever Limited since 6 A.M. The gate was closed by the Company at 8.30 A.M. when a large number of voters were still waiting outside. But a notice was given at about 8.40 A.M. from Mr. Nag, one of the Special Officers, that the election had been postponed. It appears from the photographs enclosed with the contempt application that a large number of voters were standing in queue. A memorandum was submitted to the Deputy

Commissioner of Police, Port Division, regarding connivance of the police personnel i.e. the alleged contemnors Nos. 11 and 12 with the alleged contemnors Nos. 1 to 6 to thwart the election, and some officials of M/s. Hindusthan Lever Limited i.e. the alleged contemnors Nos. 7 to 10 have also been roped in.

5. The report of the Special Officers submitted to the learned 5th Additional District Judge, no doubt, made some allegations against Mr. Sujit Kumar Biswas, Shift Superintendent of M/s. Hindusthan Lever Limited in arbitrarily refusing to allow them to perform their duties without any cogent ground as well as against the Officer-in-Charge of the South Port Police Station to refuse to record the action of Mr. Biswas in General Diary. The report also contains allegation against Mr. P. K. Chatterjee, Personnel Manager, who did not co-operate with the Special Officers. It is also stated in the report that a crowd of one hundred persons including Ashish Chakraborty trespassed into the chamber of Mr. P. K. Chatterjee, Personnel Manager, and formed an unlawful assembly and threatened the Special Officers with assault and thereby created terror, panic and strain in the body and mind of both the Special Officers. The most serious allegation in the report is that some one from unruly crowd pushed Mr. Uttam Basu, one of the Special Officers, with hard substance and Mr. Basu started sweating and trembling and had to be removed to the Medical Unit of the Company and thereafter to a Nursing Home. Another Special Officer was detained and coerced by the Management and their associates. I deliberately refrain quoting from the concluding paragraph 11 of the report submitted to the learned Additional District Judge because it would lead to more bitterness than to do any good either to the Union or the Company. But it can safely be said that the thing is going in a wrong direction and election must be held to normalise the situation.

6. I shall first take up the submissions made by Mr. Naranarayan Gooptu, the learned Advocate-General, appearing for the alleged private contemnors Nos. 1 to 6 who are in power. Mr. Gooptu has very emphatically submitted that after my Judgment of 21st July, 1989 another revisional application u/s 115 of the CPC was moved before A. K. Nandi, J. and His Lordship passed a number of orders on different dates and as such the Judgment passed by me on 21st July, 1989 merged with the orders of Mr. Justice Nandi and the Judgment of 21st July, 1989 has no more a separate identity of its own. His further contention is that as my Judgment of 21st July, 1989 has merged with the orders of Mr. Justice Nandi as such no contempt lies and the present contempt application has become infructuous. In this connection he referred to several orders passed by Mr. Justice Nandi on the revisional application moved by Ashish Chakraborty and others against Hindusthan Lever Sramik Karmachari Congress and others. He drew my attention to the order of 18th January, 1990 passed by Mr. Justice Nandi. In this order His Lordship made certain direction and appointed two Special Officers and further directed that the election might take place on 28th January, 1990 either in the Indian Association Hall or Garden Reach Police Out Post. His Lordship further directed that the result would not be published until completion of

adjudication by the learned Additional District Judge of some of the points raised relating to voters' list, inclusion of ineligible voters, non-prescribing of procedures and modalities of the election, etc. Again on 24th January, 1990 His Lordship directed that the election be held either at the Municipal Building formerly used by Garden Reach Municipality or the Police lawn of the Police Out Post. The next order is of 27th February, 1990 where both the parties agreed that the election might be held at Municipal Building. On 28th August, 1990 Mr. Justice Nandi directed the court below to appoint its own Special Officers to conduct the election.

7. The further contention of Mr. Gooptu is that the Court in a contempt proceeding should be confined to the guilt of contempt committed by the alleged contemnors and if the alleged contemnors are found guilty of contempt the Court would be at liberty to punish them or if they were found not guilty of contempt they should be absolved of contempt. The Court cannot go beyond the above line and cannot make any further direction in a contempt application towards implementation of the Judgment of 21st July, 1989. In this connection Mr. Gooptu cited a Division Bench decision of Calcutta High Court reported in 1982(2) CHN 213 (Samir Kumar Sarkar v. Maharaj Singh). The Division Bench in this case held that the contempt of court was essentially a matter which concerned administration of justice, dignity and authority of judicial tribunals. It was not a right of a party to be invoked for the redress of his grievances. It was not also a mode by which rights of a party adjudicated upon by a tribunal can be enforced against any party. When the matter relates to mere infringement of an order as between the rival parties it was clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order. According to the Division Bench the correct and proper mode was to take recourse to Order 39 Rule 2A of the Code of Civil Procedure.

8. Mr. Saktinath Mukherjee, the learned Advocate appearing for the petitioner, the Hindusthan Lever Sramik Karmachari Congress, a Trade Union led by Kamal Tewary, frankly submitted that the very purpose of the contempt application is not to have anybody punished but to have the relief granted by this Court in its Judgment of 21st July, 1989 executed. He submitted that this Court in the Judgment of 21st July, 1989 made certain directions to the Additional District Judge, 5th Court, Alipore, for holding the election of the Executive Committee of the Hindusthan Lever Sramik Karmachari Congress but the order could not be implemented as yet due to the unhealthy maneuvering of the Ashish group and the partial attitude of the Company's Officers. He submitted that his clients are interested only with fair and impartial election of the Executive Committee of the Union and nothing else and to that end this Court has ample jurisdiction in the contempt application to give appropriate and elective order. He sharply contradicted the submission of Mr. Gooptu that the Judgment of 21st July, 1989 could not be executed through a contempt application but only a contemnor could either be found guilty and punished or let off. He also took a serious note of the portion of the argument of Mr. Gooptu and refuted the contention that the

Judgment and order of this Court made on 21st July, 1989 has now merged with the various orders of Mr. Justice A. K. Nandi and as such the Judgment pronounced in July 1989 has no more its individual identity and as such the present contempt application was infructuous.

9. Mr. Mukherjee has referred to a few decisions of vital importance which I take note of. In the case of Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others, it was held that a Single Judge of the High Court was justified in giving appropriate direction in addition to punishing the party for contempt of court. It was contended before Their Lordships of the Supreme Court that the Single Judge was not justified in giving certain directions in addition to punishing the contemnors but the Supreme Court held that the Single Judge was quite right. Mr. Mukherjee cited this case to bring home the point that this Court can pass directions on the contempt application for the implementation of its order of 21st July, 1989. In the case of Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, the Supreme Court clearly held that in a contempt application arising out of a civil proceeding the court is competent to issue necessary further and consequential direction for enforcing the order. Mr. Mukherjee also referred to the two Division Bench decisions of the Calcutta High Court both presided over by P. Chakravartti, C.J. In AIR 1958 Cal. 47 , (Dulal Chandra Bhar and Ors. v. Sukumar Banerjee and Ors.) Chakravartti, C.J. held that in a civil contempt when the party in whose interest the order was made moved the court for action to be taken in contempt against the contemnor with a view to an enforcement of his right, the proceeding is only a form of execution. In Saibal Kumar Gupta and Others Vs. B.K. Sen, Chakravartti C.J. held that when an order made for the benefit of a party is disregarded or violated and the court enforces the order by punishing the delinquent for contempt, it is said that such proceeding is a form of execution.

10. Dr. T. K. Banerjee appeared for the alleged contemnors Nos. 7 to 10 who are Officers of the Company and Mr. P. Mondal appeared for the alleged contemnors Nos. 11 and 12 who are Police Officers but no occasion arose for them to make any submission.

11. I have gone through the facts of the case as presented in the contempt application as well as the arguments of Mr. Mukherjee, the learned Advocate appearing for the petitioner, and Mr. Gooptu, the learned Advocate-General appearing for the private-contemnors Nos. 1 to 6. It is difficult for me to reconcile myself with the argument advanced by Mr. Gooptu on behalf of his clients. His submission is that my Judgment of 21st July, 1989 merged with the several orders passed by My Lord Mr. Justice A. K. Nandi and the orders of His Lordship have, in fact, replaced my order which is beyond my comprehension. My Judgment and order of 21st July, 1989 got the seal of approval of the apex court of the country and no court has jurisdiction to reverse or amend or modify the said Judgment in any manner whatsoever. This is very much apparent from the order dated 18th January, 1990 passed by Mr. Justice Nandi where he started his

order by" referring to my Judgment and made certain directions based on that very Judgment. All subsequent orders are directly linked with any Judgment to further and achieve the object of holding the fresh election of the Executive Committee of the Hindusthan Lever Sramik Karmachari Congress and to end the wrangle among the two factions of the Union so that M/s. Hindusthan Lever Limited could work smoothly and peacefully with the new Executive Committee in accordance with law. I do not notice in any order of Mr. Justice Nandi that the basic direction as contained in my order has in any way been changed or modified. If this dangerous theory of "merger" and "replacement" is accepted then the Judgment of the High Court and their finalisation by the Supreme Court will become useless objects and the people will be left in lurch and one litigation will follow without any end. The contention on this point by Mr. Gooptu is untenable and similar is the position of his another submission that the instant contempt application has become infructuous. When the main order survives then under the wrong pretext of "merger" and "replacement" a contempt application cannot be said to be infructuous.

12. Mr. Gooptu has very boldly submitted that in contempt proceedings either the contemnors should be punished or let off, and there is no other way out. He further submitted that the contempt application is not an execution proceeding and no consequential relief to put into execution the main Judgment can be given in contempt proceedings and in this connection he relied very much on a Division Bench decision of the Calcutta High Court delivered by B. C. Chakraborti and N. G. Chaudhuri, JJ. reported in 1982(2) CHN 213 (supra). Of course this decision goes to help Mr. Gooptu a lot and fully supports the case made out by him. But it must be noted that two earlier Division Bench decisions of the Calcutta High Court both presided over by P. Chakravarti, C.J., reported in *Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others*, and *Saibal Kumar Gupta and Others Vs. B.K. Sen*, were not placed before the said Division Bench. Had the two decisions by the celebrated P. Chakravarti, C.J. been placed before the said Division Bench, the decision of the Division Bench presided over by B. C. Chakraborti, J. would have been totally different. Further more, the Supreme Court in the two decisions as discussed and referred to hereinbefore and reported in *Mohammad Idris and Another Vs. Rustam Jehangir Babuji and Others*, and *Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others*, has abundantly made clear that in a contempt proceeding the Court has the full right not only to punish but also to grant consequential relief. In very clear terms the Calcutta High Court in two Division Bench decisions as mentioned earlier described the contempt proceedings as a form of execution and the proceeding of contempt as proceedings in the nature of execution. The Supreme Court in the case of *Mohammad Idris* (supra) categorically held that the learned Single Judge was quite right and justified in giving certain appropriate directions to close the breach in addition to punishing the contemnors. Further the Supreme Court in the case of *Noorali Babul Thanewala* (supra) reiterated the same view by expressing that the Court was within its right to issue necessary and further

consequential directions for enforcing its order in a contempt proceeding. In view of the aforesaid four decisions, two of our High Court and two of the Supreme Court, I cannot accept the submission of Mr. Gooptu. My Judgment of 21st July, 1989 has been tested in the highest court of the land and it stands final and absolute, and the Court is duty bound to give proper and appropriate relief to the petitioner in this contempt proceeding for holding the election of the Union in keeping with the Judgment under reference. In this case justice will not be done properly by merely going into the violation of the order and finding out who is guilty or not guilty of contempt but by making effective direction to hold the election of the Executive Committee of the Union for the end of justice and preservation of the rule of law.

13. In that view of the matter, I direct the Additional District Judge, 5th Court, Alipore, to make all arrangements for holding the election of the Executive Committee of Hindusthan Lever Sramik Karmachari Congress in the compound on the vacant space of the District Judges' Court, Alipore, on any Sunday or holiday according to the convenience under the direct supervision of a senior Assistant District Judge who will be selected for the purpose by the District Judge. The 5th Additional District Judge shall give necessary direction and appoint two Special Officers for holding the election and the date will be fixed by the Special Officers in consultation with the Assistant District Judge. I also direct the District Judge concerned to implement this order and render all possible assistance to the 5th Additional District Judge including the compound availability for holding the election. All authorities concerned are directed to accord sanction, for the use of the compound and to allow the vacant portion of the compound for the election purpose for a day according to the election programme. The election shall take place on the basis of the voters' list already prepared by the Special Officers. On the day of the election the Company shall allow leave to the workers to participate in the election. The tent for the purpose of the election on the vacant land of the Court premises, to be specified by the District Judge, shall be put on by the petitioner at its costs subject to the supervision of the Special Officers. The Deputy Commissioner of Police and the Officer-in-Charge of the Police Station of the area concerned are directed to render all possible assistance and police help as required by the Additional District Judge, 5th Court, Alipore, or the Assistant District Judge to be appointed for the purpose of supervision or the Special Officers and shall maintain peace and order on the spot. The Assistant District Judge shall act as the Returning Officer and for assistance the Special Officers may take other hands to help them in counting the votes. The counting shall take place immediately at the end of the polling time and the Assistant District Judge shall declare the result forthwith after the counting is over. The newly elected Executive Committee of the Union shall assume office with the leave of the Additional District Judge, 5th Court, Alipore, and if anybody has any objection to the election he would be entitled to present his representation before the 5th Additional District Judge who will consider the same and pass necessary order and if he thinks proper allow the elected representatives to

assume the office. The election must be by secret ballot and must be completed by 14th August, 1991.

14. The contempt application is accordingly disposed of. There will be no order as to costs.

15. The Registrar, Appellate Side, High Court, is directed to communicate the copy of this order to the learned District Judge, Alipore, and the learned Additional District Judge, 5th Court, Alipore, by 10th June, 1991 positively at the cost of the petitioner, the requisite for which must be put in by 5th June, 1991.

16. Let xerox copy of the Judgment be made available to the parties on usual undertaking and upon compliance of necessary formalities.