

(1984) 12 AHC CK 0024
In the Allahabad High Court

In Re : R.K. Chakravarty, Collector, Custom and Central Excises

Date of Decision : 18-12-1984

Acts Referred:

Central Excises and Salt Act, 1944 — Section 14
Constitution of India, 1950 — Article 215, 225, 226
Contempt of Courts Act, 1971 — Section 10, 2, 23

Citation : (1984) AWC 297 Supp : (1985) CriLJ 961

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Judgement

I.P. Singh, J.—This contempt application has been moved under Article 215 of the Constitution of India (hereinafter referred to as the Constitution) by Mr. R. K. Chakravarty, Collector and Mr. Mahender Singh, Assistant Collector, Custom and Central Excise, Varanasi, applicants. (They are respondents in Civil Misc. Writ Petition No. 398 of 1984 moved under Article 226 of the Constitution by petitioners Messrs National Chemical Works Manduadih, Varanasi). The relief sought in the present contempt petition is that this Court may charge the partners of the petitioner from (M/s National Chemical Works) jointly and severally and punish them for the abuse of the process of the court.

2. Article 215 of the Constitution runs as follows:

High Courts to be Courts of record : - Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.

Obviously then the applicants are treating the alleged "abuse of process of the court" as contempt of court.

3. Here it may be noted that present contempt application was presented before the sitting in a single Judge Bench of this Court for admission, The case is itself at admission stage.

4. Now the current legislation on the subject of contempt of courts is the Contempt of Courts Act (70 of 1971) (hereinafter referred to as the Act). It was

brought on the Statute Book to "define and limit the powers of certain courts."

5. Section 10 thereof provides as follows:

Power of High Court to punish contempts of subordinate courts : Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempt of itself.

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

Obviously Section 10 above does not confer any new jurisdiction on the High Court but only recognises the initial inherent jurisdiction as Court of Record already having constitutional sanction under Article 215 of the Constitution:

6. But the question arises how this power is to be exercised by the High Court. Article 225 of the Constitution reads:

225 : Jurisdiction of existing High Courts : Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the; exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

Article 225, therefore, recognises and affords sanction to the power of the High Court to "make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts."

Section 23 of the Act provides:

Power of Supreme Court and High Courts to make rules:

The Supreme Court or, as the case may be, any High Court, may make rules not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.

7. This Court has framed Rules for the purpose which are mentioned in Chapter XXXV-E of the Allahabad High Court Rules, 1952 (hereinafter referred to as the Rules). Rule 1 of Chapter I of the Rules says : "These Rules are made by the

High Court of Judicature at Allahabad in exercise of the powers conferred by Article 225 of the Constitution of India and all other powers entitling it on that behalf."

8. Thus the Rules contained in Chapter XXXV-E of the Rules, though captioned as "Rules framed u/s 23 of the Contempt of Courts Act, 1971" and despite laying down in Rule 1 of that Chapter that "The Rules contained in this Chapter shall govern presentation and hearing of Contempt of Court cases coming to the High Court under the Contempt of Courts Act, 1971" would not be merely under that Act but would be under overall Article 225 of the Constitution. These Rules would equally apply to the procedure to be adopted by this Court in the matter of punishing contempt of itself under Article 215 of the Constitution.

9. Rule 2 of Chapter XXXV-E of the Rules provides:

Every application, reference or motion for taking proceedings under the Contempt of Courts Act, 1971, shall mention at the head whether it relates to the commission of "Civil Contempt" or "Criminal Contempt".

Rule 4(a) of Chapter XXXV-E provides:

Every case relating to civil contempt shall be presented before the Bench of a single Judge constituted for that purpose.

10. It would, therefore, follow that every alleged contempt has to be dealt with under any of the two heads- "Civil Contempt" or "Criminal Contempt". Primarily it is incumbent upon the applicant to mention at the head of the application whether it relates to the commission of "Civil Contempt" or "Criminal Contempt". It is contended by Shri R. S. Dhawan, the learned Counsel for the applicants that he had not marked the application either way as he moved this application under Article 215 of the Constitution and not under the Act. However, as observed above, this Court has to follow its procedure and in accordance with it the office on its own initiative marked it as "Civil Contempt Petition". Perhaps for that reason it was then presented for admission before this single Judge Bench as provided by Rule 4(a) of Chapter XXXV-E of the Rules.

11. But the single Judge could entertain and admit it only if the application in substance really complains of a "Civil Contempt" because "Criminal Contempt" matters will have to be presented before the Bench of not less than two Judges vide Rule 4(b) of Chapter XXX-E of the Rules. Definition of "Civil Contempt" and "Criminal Contempt" will have to be borrowed from the Act. Since in the present petition the only point, for the moment, to be seen is as to whether the alleged contempt is covered by the definition of "Civil Contempt" or not I quote its definition only as given in Section 2(b) of the Act:

"Civil Contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court.

12. There is no allegation in the application that there has occurred any disobedience (much less willful disobedience) to any judgment, decree, direction, order, writ of a court or willful breach of any undertaking given to a court.

13. In para 16 of the application it is mentioned that the petitioner which filed the writ petition did not disclose in the writ petition that, he had received a notice dated 12-4-1984 u/s 14 of the Central Excises and Salt Act, 1944, requiring the partner to appear before the Assistant Collector Custom and Central Excises, Varanasi on 16th April, 1984, for certain clarifications, enquiries and production of document in the matter whether the goods manufactured or processed by them were amenable to levy of excise duty. However, it is admitted in para 17 that writ petition had been filed before the above notice was received by the opposite party. Certainly the above fact could not have been disclosed in the writ petition. It is further mentioned in paras 17 to 20 that the above fact of receipt of said notice and further correspondence in that regard till 5-5-84 was also not brought to the notice of the Court at any (subsequent) stage in the proceedings of the writ petition. It was by suppression of material facts that petitioner firm succeeded in obtaining order dated 21/25-5-84 from the Court. The contention is that obtaining of Court's order dated 21/25-5-84 by concealment of certain facts amounted to abuse of the process of the Court which was nothing short of contempt of Court.

14. A point arises that when the application does not disclose a case of civil contempt and is not to be entertained or admitted by this Bench should it be returned to the applicants for presentation to the Bench having jurisdiction to entertain and deal with "criminal contempts".

15. I refrain from expressing any opinion as to whether the allegations made in the application amount to a criminal contempt because that would be a matter to be considered by the Bench constituted for entertaining and dealing with matters of criminal contempt.

16. However, Sri R. S. Dhawan, learned Counsel for the applicants maintains the view that he is not obliged to mark his application either as "civil contempt" or "criminal contempt" inasmuch as it is under Article 215 of the Constitution and not under the Act and, therefore, need not be entertained or dealt with by the respective Benches constituted for those purposes but should be heard by the Bench hearing the parent writ petition No. 398/84.1, however, find myself unable to share his above views.

17. As a result of the above discussion as the present application does not disclose a case of civil contempt", it cannot be entertained or dealt with by this single Judge Bench and is hereby rejected.