

(2004) 02 PAT CK 0024
In the Patna High Court
Case No : MJC No. 1821 of 2003

In Re: Sri Ram Krishna Pandey, Executive President, Motihari Chini Udyog

Date of Decision : 26-02-2004

Acts Referred:

Citation : (2004) 02 PAT CK 0024

Judgement

S.K. Katriar, J.—This disposes of suo motu contempt, proceeding initiated under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act 1971 (hereinafter referred to as the "Act"), against Ram Krishna Pandey, Executive President, and M.P. Dhandhanian, Director, both of Eastern Sugar Industries Limited (hereinafter referred to as the "Company"), for the alleged refusal and/or failure on their part to carry out the undertakings to this Court.

2. The circumstances leading to initiation of the present proceeding are indicated hereinafter. The company had filed MJC No. 3800 of 2000, inter alia, with the prayer to permit payment of cane price to the cane growers for the period 1999-2000, as per a convenient schedule submitted by them. The proposed schedule of payment was approved by order dated 5.1.2001, passed in the said MJC No. 3800 of 2000, and is set out hereinbelow :

Rs. in Lakhs	
Upto 28th February, 2001	20.00
Upto 31st March, 2001	20.00
Upto 30th April, 2001	20.00
Upto 10th May, 2001	20.00
Upto 30th June, 2001	20.00
Upto 31st July, 2001	20.00
Upto 31st August, 2001	20.00
Upto 30th September, 2001	20.00
Upto 30th November, 2001	20.00
Upto 30th December, 2001	the balance
Total	200.00 (2 crores approximate)

The matter was again taken up on 21.6.2001, on which date the company filed affidavit showing payment of instalments up to 31.7.2001. The remaining

instalments were not paid upto July 2003 in spite of repeated opportunities given to the Company. By order dated 21.7.2003, the company was granted four weeks time to file affidavit personally sworn by the General Manager of the Unit reporting compliance of the undertaking given to this Court. The Company deputed R.K. Pandey to appear in Court on 15.9.2003, but did not file the requisite affidavit. Therefore, contempt proceedings were initiated against the company and R.K. Pandey by order dated 15.9.2003, indicating the charge that "such action on the part of the petitioner company and its functionaries is prima facie in disobedience of the order of this Court." He was on that date sent to civil prison. By order dated 17.9.2003, the Managing Director of the company was directed to report compliance of the undertaking and be present in Court on 23.9.2003. B.K. Nopani, one of the Directors of the company filed affidavit in the capacity of Director in-charge of the company so deputed, acknowledged the dues but did not appear in Court. The undertaking was not carried out.

3. The contemnners preferred MA No. 362 of 2003, MA No. 363 of 2003, and MA No. 368 of 2003 u/s 19(i) of the Act, inter alia, challenging initiation of the contempt proceeding and for allied reliefs. The same were disposed of by a Division Bench of this Court by order dated 26.9.2003, whereby bail was granted to R.K. Pandey on the condition that the arrears shall be deposited until the last working week of 2003 and for which one of the Directors shall stand surety before the Registrar General of the Court who, in his turn, was directed to submit report to this Court whether or not the Director has carried out the undertaking. M.P. Dhandhanian, one of the Directors of the Company, accordingly submitted his undertaking and stood surety and, therefore, R.K. Pandey was released on bail on 27.9.2003.

4. As directed by the Division Bench, the Registrar General has submitted his report dated 5.1.2004, wherein it is stated that M.P. Dhandhanian has not carried out his undertaking and a sum of Rs. 31,82,198.37 P. remains unpaid. Therefore, by order dated 7.1.2004, M.P. Dhandhanian was also impleaded as a condemner, and further charge was framed to the effect that "M.P. Dhandhanian is thus obviously in breach of his undertaking given to this Court". Both the contemnners were, therefore, directed to submit their show-cause and be personally present in Court on 21.1.2004. The contemnners submitted their show-cause, R.K. Pandey was present on 21.1.2004, but M.P. Dhandhanian did not appear on that day. It was, inter alia, stated that a sum Rs. 14,48,227.83P. had been disbursed to the cane growers between 8.1.2004 to 14.1.2004, a sum of Rs. 15,78,000/- remains unpaid, and further stated that they were ready with the money and shall deposit with the Collector of the district. It was directed that the breach of the undertakings and disobedience of the orders of this Court shall be considered on 10.2.2004, and they may in the meanwhile deposit the balance outstanding amount with the Collector.

5. The contemnners have understood the charges indicated in the orders dated 15.9.2003 and dated 7.1.2004 and have submitted their exhaustive show-cause.

The charges are in two parts which are as follows :

(i) Whether or not the contemnors have carried out the undertaking given to this Court and paid/deposited the arrears as per the schedule of payment indicated in the order dated 5.1.2001, passed in the said MJC No. 3800 of 2000.

(ii) To what extent M.P. Dhandhanian has carried out the undertaking given to the Division Bench and indicated in the order dated 26.9.2003, passed on MA Nos. 362 of 2003, 363 of 2003 and 368 of 2003;

6. Mr. Basudeo Prasad, learned counsel for the contemnors submits that in order that the contemnors may be held guilty of "civil contempt" within the meaning of Section 2(b) of the Act, it must first be held that they are guilty of wilful violation of the undertakings to this Court. In his elaborate submissions, he has taken me through the pleadings on record in an effort to satisfy this Court that there is no wilful disobedience of the orders of this Court. The Sugar Company is passing through a difficult phase and, therefore, the contemnors could not comply with the order. He has also submitted that it is not a fit case in which a sentence of imprisonment can be awarded to the contemnors. He submits in the alternative that the contemnors may be let off with a fine. He relies on the following reported judgments :

(i) Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another, ;

(ii) Indian Airport Employees Union Vs. Ranjan Chatterjee and another, ;

(iii) 1996 (1) BLJR 36 (Indian Oil Corporation Ltd. and Ors. v. Shiv Shankar Mishra);

(iv) A. Ramalingam Vs. V.V. Mahalinga Nadar, ;

(v) Abdul Razack Sahib Vs. Mrs. Azizunnissa Begum and Others, ;

7. Mr. V.N. Sinha, the learned Government Pleader No. IX, has submitted that a clear case of wilful violation of their undertakings to, and disobedience of the orders, of this Court has been made out.

8. I have heard learned counsel for the parties at length and perused the materials on record at length including the show-cause of the contemnors. In so far as the first charge is concerned, it is manifest that the undertaking to this Court to the effect that the instalments payable upto December 2001 was not honoured upto 15.9.2003, on which date contempt proceedings were initiated against the company and R.K. Pandey, the Executive President, deputed by the Company, in spite of repeated opportunities granted till then and thereafter till 26.9.2003. This Court had to chase the matter to have its orders complied with, belittling itself. It is obvious that the contemnors did not appreciate the indulgence shown to them by order dated 5.1.2001, passed in MJC No. 3800 of 2000, in a situation when the main matter was pending before the Certificate Officer where no effort was made to obtain instalments, the contemnors approached this Court directly and it took upon itself to grant instalments, and

this Court has been chasing them ever since 16.5.2001 to ensure that the undertaking given to this Court is implemented. The contemnors seem to be under the belief that they can ignore the undertakings with impunity and the Court would not take a serious view of the matter. I have no manner of doubt that the company and its functionaries have acted in breach of the undertaking given to this Court indicated in the order dated 5.1.2001, passed in MJC No. 3800 of 2000. The company and R.K. Pandey are accordingly held guilty of the charge, having been deputed/nominated to represent the company.

9. As to the second charge, the appeals were disposed of by a Division Bench by order dated 26.9.2003, whereby Ram Krishna Pandey was directed to be released on bail on the condition that one of the Directors of the company shall stand for and on behalf of the company and on behalf of all the Directors severally and jointly, surety to the amount which is due and reiterate the commitment to honour the undertaking before or during the last working week of December 2003 of the Court. M.R Dhandhanian, one of the Directors of the company, gave the undertaking and stood surety before the Registrar General which was duly submitted on 27.9.2003, and obtained the release order of R.K. Pandey. The learned Registrar General has reported that a sum of Rs. 31,82,198.37 p. was the unpaid amount till the date of the report. It appears from the subsequent developments that Rs. 14,48,227.83 p. has been disbursed between 8.1.2004 to 14.1.2004, and cheques for Rs. 15,78,000/- have been handed over to the Collector of the District on 3.2.2004, thereby completing payment of two crores. M.R Dhandhanian has obviously acted in breach of the undertaking given by him to this Court.

10. Failure to carry out the undertakings given to the Court stand on a different footing and is a very serious matter. I am in this connection reminded of the law enunciated by Halsbury's Laws of England (Fourth Edition), Vol. 9, page 44, para 75, which is set out hereinbelow for the facility of quick reference :--

"75. Breach of undertaking. An undertaking given to the Court by a person or corporation in pending proceedings, on the faith of which the Court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and a breach of the undertaking is misconduct amounting to contempt. The Court will not commit a defendant unless both the terms of the undertaking and the breach are clear beyond question.

A person will not to be held guilty of the breach of an undertaking unless he has proper notice of its terms. Thus an undertaking given in Court on behalf of a person without his knowledge and not communicated to him will not be enforced by process of contempt.

Where the undertaking is of a negative character, personal service of the order containing the undertaking is unnecessary provided the party against whom enforcement is sought has notice of the undertaking. It seems, however, that personal service is required where the undertaking is positive in character.

Where an undertaking has been given on behalf of a company, the company will be guilty of contempt if, with knowledge of the terms of the undertaking, it fails to carry out its obligations contained in the undertaking. A director or other officer of the company may also be punishable in contempt in respect of the company's breach of undertaking provided that such director or officer has proper notice of the terms of the undertaking; but a director is only liable in his capacity as "agent" for the company and not in his capacity as shareholder. Proceedings will only lie against a director or officer of the company if the company itself is liable for a breach of undertaking. As in the case of disobedience to an order of the Court, breach to an undertaking is punishable by committal or by sequestration."

11. Learned counsel for the contemnors have submitted that the time granted by this Court by order dated 5.1.2001, to deposit the arrears up to 30.12.2001 will be deemed to have been extended by the Division bench up to 20.12.2003, the last working day of the Court in 2003, and therefore, there was no violation of the undertaking up to 20.12.2003. It is difficult to accede to the submission for the reason that, in my view, the Division Bench granted time to deposit the arrears up to 20.12.2003 for the purpose of bail and the contemnors purge themselves of the contempt. I am not inclined to take the view that the order dated 5.1.2001, passed in MJC No. 3800 of 2000, was modified by the Division Bench and the time allowed for payment of instalments up to 30.12.2001 was extended. M.P. Dhandhanian is thus grossly guilty, having obtained bail for R.K. Pandey without carrying out the undertaking. Except the repeated submissions during the course of oral arguments that the contemnors have not wilfully violated the undertakings, no worthwhile material has been placed before me to substantiate the submission. I am pained to record that the extra-ordinary indulgence shown by this Court to the company and the contemnors have repeatedly been violated with impunity. The contemnors have accentuated their guilt by suppressing the material fact before this Court that they filed appeals before the Division Bench, bearing MA, No. 11 of 2004 and MA No. 12 of 2004, for extension of time granted by the said order dated 26.9.2003 (passed in MA Nos. 362, 363 and 368 of 2003), which was rejected by order dated 20.1.2004, and this Court has chanced upon the same because the Registry has forwarded the records after the arguments concluded. I have no manner of doubt that there cannot be a more serious case of wilful breach of undertakings to the Court. The contemnors are guilty of contempt of this Court for having wilfully failed to carry out the undertakings given to this Court.

12. This takes me on to the question of sentence. Learned counsel for the contemnors has made elaborate submissions and, as stated hereinabove, has relied on a number of authorities in support of the submission that a sentence of fine would suffice in the facts and circumstances of the present case. The contemnors have chosen to contest this matter. The Division Bench granted bail to R.K. Pandey on the condition that one of the Directors shall ensure payment of the outstanding amount until the last working day of December, 2003, i.e.

20.12.2003, as a condition for grant of bail. As stated above, it was only a condition for grant of bail and was not modification of the order dated 5.1.2001. The contemnors not only failed to carry out the undertaking given to the Division Bench but have in fact obtained bail by taking the Court down the garden path. Thereafter the contemnors moved the Division Bench by preferring MA Nos. 11 of 2004 and 12 of 2004 for extension of the time granted by order dated 26.9.2003, which were rejected by the Division Bench by order dated 20.1.2004, and was suppressed by the contemnors. The contemnors have deprived themselves of all sympathy.

13. Learned counsel for the contemnors have relied on the aforesaid judgments which lay down to the effect that the contemnors can be punished for civil contempt only if they have wilfully disobeyed the orders of this Court. There is no quarrel with this proposition but does not apply to the facts and circumstances of the present case in view of the foregoing discussion.

14. The undertakings given to this Court have been violated with such impunity that this Court was driven to the unenviable position of chasing the company and the contemnors so that the undertakings are complied with. There was never an attempt before the Single Judge to apply for extension of time. And look at the long length of time available to the company and the contemnors to carry out the undertakings. A mere sum of rupees two crores was required to be paid in a period of one year, up to December 2001, and has instead been finally paid on 3.2.2004, after taking so much of Court's time and efforts. This is accentuated by further position that the contemnors gave a false undertaking to obtain bail. While granting bail, the Division Bench gave more than sufficient time to make payment of the arrears, till the last working day of 2003, i.e. 20.12.2003, which was also flouted. The second batch of appeals filed by the appellants (contemnors) in January 2004 for extension of time were rejected, and was withheld from this Court. I am, therefore, convinced that this is a case of perverse and deliberate flouting of undertakings given by the contemnors who evidently had no intention to abide by them. They took all the advantages of the undertakings without honouring them. The undertakings seem to have been taken very lightly. Had the contemnors not given the undertakings, this Court and the Division Bench may not have approved the course of action proposed by them and pass the orders as it did on 5.1.2001 and 26.9.2003 respectively. They have contested the matter without a trace of contrition, remorse or apology. I, therefore, do not find any mitigating circumstance in favour of the appellants. On the contrary, all the circumstances recommend a strict view of the matter. A lenient view of the matter would encourage litigants to refuse to honour their undertakings to the Court, threatening the majesty, credibility and administration of justice, and will destroy the public confidence in the Judiciary. I am supported by the following reported judgments :--

(i) Chhaganbhai Norsinbhai Vs. Soni Chandubhai Gordhanbhai and Others, ; .

(ii) Balram Singh Vs. Bhikam Chand Jain and Others, ;

(iii) 1995 CRILJ 577 (Tukaram v. Santosh Mahadeorao Sayam and Ors.);

(iv) (1962) 3 ALLER 1056 (Husson v. Husson) 15. In view of the foregoing discussion, I hereby sentence the company to pay a fine of Rs. 50,000/- (Fifty thousand) to be deposited with the Bihar State Legal Services Authority within a period of four weeks from today. Ram Krishna Pandey and M.P. Dhandhanian are directed to undergo simple imprisonment for three months each.

16. The matter goes back to the Certificate Officer and/or the Collector of the district for completion of accounts, payment of the balance amount as well as interest, if any, in accordance with Section 42 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981, if applicable, and in accordance with law.

17. The contempt proceeding is accordingly disposed of.