

(2003) 01 OHC CK 0093
In the Orissa High Court
Case No : CONTC. No. 238 of 2003

Khemchand Agrawal

APPELLANT

Vs

Commissioner, Irrigation, presently designated as
Commissioner, Water Resources Department, Government of
Orissa and The Executive Engineer

RESPONDENT

Date of Decision : 21-01-2003

Acts Referred:

Citation : (2003) 01 OHC CK 0093

Hon'ble Judges : Sujit Barman Roy, C.J.; A.S. Naidu, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sujit Barman Roy, C.J.—This is an application under Section 11 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, 1950.

2. This Court by order dated 27.2.2001 disposed of Original Criminal Misc. Case No. 178 of 1993. The said order reads as under:

Heard counsel for parties.

Though eight years have elapsed from the date of the order alleged to have been disobeyed, the authorities have not cared to comply with the order of this Court. They must thank their stars because the Petitioner did not press the Court to take coercive steps against the authorities who are responsible in disobeying the order passed by this Court.

However, we feel that justice will be done if the contemner is directed to comply with the order of this Court dated 16.9.1991 passed in OJC No. 4963 of 1990 within a period of four weeks from this date positively if not already done.

With the above observation and direction, the contempt application is disposed of. Subsequently by order dated 13.3.2001 passed in Misc. Case No. 19 of 2001, this Court corrected the aforesaid order dated 27.2.2001 to the following effect.

In place of "dated 16.9.1991 passed in OJC No. 4963 of 1990" appearing in the aforesaid order "dated 30.4.1993 passed in OJC No. 6216 of 1992" be substituted.

The misc. case is disposed of.

3. From the aforesaid orders dated 27.2.2001 and 13.3.2001, it appears that this Court directed the contemnors to comply with the order of this Court dated 30.4.1993 passed in OJC No. 6216 of 1992 within a period of four weeks from the date on which said order was passed. Despite this direction issued by this Court, the contemnors did not comply with the directions issued by this Court on 30.4.1993 in OJC No. 6216 of 1992. As the contemnors did not comply with the aforesaid direction, the Petitioner has again filed the instant contempt petition in this Court on 17.3.2003. From the above quoted orders, it appears that the contemnors were required to comply with the directions issued in 1993 within four weeks commencing from 13.3.2001. As the contemnors did not comply with such directions within the stipulated period, cause of action, if any, under the Contempt of Courts Act, 1971 (hereinafter referred to as the "Act") arose just on expiry of four weeks" period commencing from 13.3.2001. Therefore, limitation as prescribed under Section 20 of the Act expired on or about 13.4.2002. It appears that the instant petition was filed almost one year after expiry of the limitation. On being asked as to whether the instant contempt petition is barred by limitation as provided by Section 20 of the Act, Learned Counsel for the Petitioner contended that the limitation prescribed under the Contempt of Courts Act cannot apply to bar the jurisdiction of this Court to punish the contemnors in view of the power conferred upon it under Article 215 of the Constitution of India. According to the Learned Counsel for the Petitioner, the constitutional power as envisaged in Article 215 of the Constitution cannot be controlled or regulated or abridged by ordinary legislation. It is the contention of the Learned Counsel for the Petitioner that the present proceeding for punishing the contemnors is certainly maintainable.

It is true that Article 215 of the Constitution of India does not prescribe any limitation. To buttress the aforesaid contention, Learned Counsel for the Petitioner referred to a decision of Calcutta High Court in *The Tata Iron and Steel Company Ltd. Vs. Ramniwas Poddar and Others*, . It has been held in this case by learned Single Judge of Calcutta High Court that the Contempt of Courts Act, 1971 cannot define, limit or regulate the High Court's power under Article 215 to punish for contempt of itself summarily. Sections 15 and 20 are ultra vires Article 215. Section 15, however, can co-exist with the summary powers of the High Courts only as an alternative or additional procedure so far as Article 215 is concerned and non-compliance thereof will not affect High Courts' power to punish. 1971 Act also can co-exist as laying down the law for contempt of Courts subordinate to High Courts. It has been further held in this case by the Calcutta High Court that the word "Court" in Entry 14 of Concurrent List cannot include High Courts by implication in view of the fact that the Constitution does not

contain any provision directing the High Courts to exercise all their powers subject to the law of legislature. The legislature, therefore, by virtue of Entry 14 of 7th Schedule can make laws conferring additional powers on the High Courts concerning contempt of Court but it has no power either to define or limit or regulate the existing powers of the High Courts for punishing for contempt of itself in a summary manner. Article 215 does not permit the legislature to do so.

If the framers of the Constitution intended that High Courts power to punish for contempt of itself can be defined, limited or regulated by law, an express provision would have been made to that effect in the Constitution itself. Therefore, neither the Parliament nor the State legislature has any power to define, limit or regulate the procedure regarding the High Court's special jurisdiction to punish summarily for contempt of itself. Under Constitution, as it stands today, the High Courts, as Courts of record, fully preserves all its aecial inherent jurisdiction to punish for contempt of itself and there is no restriction. Sections 15 and 20 offend against Article 215 and must be declared to be ultra vires. But, if Section 15 of 1971 Act is interpreted in the manner that it provides alternative procedure without impairing the High Courts' inherent special jurisdiction, so that both the procedures laid down in Section 15 as well as High Courts' summary jurisdiction to punish for contempt of itself can co-exist, then Section 15 may not be held to be ultra vires. It may also be that 1971 Act only related to contempt of Courts subordinate to High Courts and does not affect Article 215 at all. But, under no circumstances, Section 20 can be held to limit the High Courts' special jurisdiction under Article 215.

4. Relying upon the aforesaid decision of the learned Single Judge of the Calcutta High Court, Learned Counsel for the Petitioner contended that the limitation as prescribed by or under Section 20 of the 1971 Act cannot apply to the power of the High Court under Articles 215 of the Constitution to punish for contempt of itself.

5. Learned Counsel for the Petitioner further referred to a Full Bench decision of Karnataka High Court reported in ILR (1990) Kar 3455, It appears that Karnataka High Court in the aforesaid decision held the view similar to that of Calcutta, High Court. However, Calcutta High Court expressed the view in the absence of any provision enabling the legislature to make laws for defining, limiting or regulating the power of the High Court to punish for contempt of itself, cannot make a law like Section 20 or Section 15 affecting the High Court's power to punish for contempt of itself. But, however, Calcutta High Court is an existing High Court within the meaning of Article 225 of the Constitution of India. Article 225, inter alia, provides that 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. Therefore, jurisdiction of the existing High Courts to punish for contempt of itself is subject to the provisions of Constitution and the provision of any law of appropriate legislature made by virtue of powers conferred on that legislature by the Constitution, Entry 14 of the Concurrent List of the 7th Schedule deals with law making power on the subject of contempt of Court does but not include contempt of SC.

Provisions of Chapter I of Part II of the Constitution of India confer on the Parliament and also the State Legislature to make law on the subject. Therefore, there cannot be any dispute that the Parliament is competent to make laws on the subject under Entry 14 of the said List by virtue of what is provided by or under Chapter I of Part II of the Constitution of India. Power of existing High Courts including Calcutta High Court which existed since before Constitution of India came into force is therefore, subject to the provisions of the Constitution and the laws made by the competent Legislature. There is not escape from this conclusion in view of what is expressly provided for under Article 225 of the Constitution read with the provisions of Chapter I of Part II thereof and Entry 14 of the aforesaid List. While expressing the view that the Constitution does not contain any such provision enabling the Legislatures including the Parliament to enact a law like Contempt of Courts Act, 1971 so far as its provision relates to the power of the High Court to punish for contempt of itself, we are constrained to observe that Calcutta High Court or the Karnataka High Court did not take into consideration the effect of the aforesaid provisions of the Constitution. In that view of the matter, we are unable to accept the proposition laid down by the Calcutta High Court and Karnataka High Court in the aforesaid two decisions as correct proposition of law.

6. In this connection, decision of the Apex Court in *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, may be referred to. In this case, the SC expressed the view that the exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court. From this observation by the Apex Court in the aforesaid Judgment, it clearly appears that limitation as provided under Section 20 of the Act, clearly applies to the power of the High Court to punish for contempt of itself. Article 215 of the Constitution does not prescribe the quantum of punishment to which a person found guilty of contempt of High Court can be sentenced. But the Contempt of Courts Act, 1971 contains the provisions prescribing the maximum punishment to which a person found guilty of contempt of High Court can be sentenced. Now, if this provision prescribing maximum punishment under the Contempt of Courts' Act 1971 is held to be inapplicable to the power of High Court under Article 215 of the Constitution to punish for contempt of itself, then a person found guilty of

contempt of High Court can be sentenced to life imprisonment also or to even death sentence. If the proposition of Calcutta High Court and Karnataka High Court in this regard is to be accepted then, there is no escape from the conclusion that the High Court can sentence a person found guilty of contempt of itself to life imprisonment or to death sentence. Surely, such a proposition cannot be accepted. Therefore, in our view, Parliament was competent to make a law like Section 20 of the Act prescribing maximum time limit within which the proceeding for contempt can be initiated and such provision is applicable to the jurisdiction of the High Court under Article 215 of the Constitution to punish for contempt of itself.

7. SC again in *Pallav Sheth Vs. Custodian and Others*, held that there can be no doubt that the SC and High Courts are Courts of Record and the Constitution has given them the powers to punish for contempt. This power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law would not be regarded as having been validly enacted. However, a law providing for the quantum of punishment or what mayor may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution. Courts have always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted, by the legislature it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously. It therefore, follows that if Section 20 is so interpreted that it does not stultify the power under Article 129 or Article 215 then, like other provisions of the Contempt of Courts Act relating to the extent of punishment which can be imposed, a reasonable period of limitation can also be provided. The SC further observed in the same judgment that Section 20 deals not only with criminal contempt but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the SC but would also be applicable in the case of contempt of Subordinate Court. The SC also held that Section 17 of the Limitation Act will apply to a contempt proceeding in case of fraud and not otherwise. In the instant case, no case of any fraud has been set up by the Petitioner. Therefore, there is no question of applying the provisions of Limitation Act in the instant case.

8. In another judgment of the SC in *Om Prakash Jaiswal Vs. D.K. Mittal and Another* [OVERRULED], , it has clearly been laid down that Section 20 of the Act is applicable of a proceeding for contempt of Court. It has further been held that Section 20 does not provide limitation in the sense in which the term is

understood in the Limitation Act and therefore, Section 5 of the Limitation Act does not apply to Section 20 of the Contempt of Courts Act. In fact, the SC held in this judgment that Section 20 of the Act strikes at the jurisdiction of the Court to initiate any proceedings for contempt, and Section 5 of the Limitation Act has no manner of application thereto.

9. In view of the aforesaid authoritative decisions of the Apex Court, and in view of what is provided by or under Article 225 of the Constitution read with Chapter I of Part II of the Constitution and Entry 14 of the Concurrent List thereof, are express the view that the proposition laid down by the learned Single Judge of Calcutta High Court and the decision of the Full Bench of Karnataka High court is not correct and therefore, we further hold that Section 20 is certainly applicable to the jurisdiction of the High Court under Article 215 of the Constitution to punish for its contempt. Such a provision is a reasonable provision and it adds an element of reasonableness to the power of the High Court to punish for contempt of itself. In the absence of such provision, this power may become unreasonable and may suffer from the vice of arbitrariness. After all, a contemner cannot be kept under perpetual threat for initiation of contempt proceeding against him. Some days after hearing of this application was concluded, Learned Counsel for the Petitioner mentioned before us that he has filed a petition for condonation of delay. Such petition should have been tiled at least along with the instant application. That petition not having been tiled at least along with the instant application, or prior to the date when the instant application was filed and the hearing of the contempt petition having been concluded before the application for condonation of delay was filed, we are constrained to observe that such application cannot be taken into consideration. That apart, Section 5 of the Limitation Act has no manner of application to a proceeding under the Contempt of Courts Act.

10. In the result, we hold that this application having been filed long after the expiry of the period of one year since the cause of action arose, this application is not entertainable and accordingly, we dismiss the same.